

**IN THE CIRCUIT COURT OF SAINT LOUIS CITY  
STATE OF MISSOURI**

CHRIS WHISTLER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 2019SMMT
	)	JURY TRIAL DEMANDED
OAK GARDENS EARTH RESIDENCE,	)	
	)	
Defendant.	)	

**PETITION**

COMES NOW Plaintiff Chris Whistler, by and through the undersigned counsel, and for her cause of action against Defendant, alleges and states as follows:

**PARTIES**

1. Plaintiff Chris Whistler ("Plaintiff") is a resident and citizen of St. Louis, Missouri who was employed by Defendant Oak Gardens Earth Residence ("Defendant") or ("OGER").
2. Defendant is and was at all times relevant to the allegations herein, a Missouri Corporation organized and doing business in the State of Missouri.
3. Defendant is an employer within the meaning of the Whistleblower's Protection Act, R.S.Mo. Section 285.575.
4. At all times relevant herein, the individual actors named herein, including but not limited to Plaintiff's supervisors and management-level employees of Defendant, were agents, servants and employees of Defendant and were at all times acting in the course and scope of their employment/agency relationship. Therefore, Defendant is liable for the actions of said persons.

**JURISDICTION AND VENUE**

5. The wrongful conduct alleged herein occurred in St. Louis City, Missouri, giving this Court jurisdiction over the Defendants and making this Court the appropriate forum for adjudication of Plaintiff's claim.

## **GENERAL ALLEGATIONS**

6. On or about January 3, 2017, Plaintiff was hired by Defendant as a cook.
7. Defendant is engaged in the business of operating a long-term care facility known as OGER.
8. During Plaintiff's employment with Defendant, Plaintiff observed numerous unlawful acts and serious misconduct committed by Defendant through its agents, servants and employees.
9. Plaintiff observed that Defendant, through its Director of Nursing, Aubrey Mills, repeatedly brought his/her dog to work, where he/she ignored it and permitted the dog to enter the kitchen and dining room in violation of 19 CSR 30-87.030(1), (2), (3), (9) and (13).
10. Plaintiff observed evidence of urination and defecation by the Director of Nursing's dog in the halls and dining room and notified her supervisor.
11. Plaintiff observed the dog enter the kitchen in violation of the regulations.
12. Plaintiff observed the dog create concerns about food sanitation.
13. Residents objected to the dog being in the dining room.
14. On June 10, 2019, the Plaintiff reported her concerns about the issues described in paragraphs 9-13 herein to Aubrey Mills.
15. On June 11, 2019, Plaintiff reported her concerns to the Missouri Department of Health and Senior Services.
16. On June 12, Plaintiff was discharged from her employment. Upon information and belief, Plaintiff's termination was motivated by her reporting of Defendant's unlawful acts and serious misconduct.

## **COUNT I**

### **Whistleblower's Protection Act, R.S.Mo. Section 285.575 - Violation of Sanitation Regulations**

17. Plaintiff hereby incorporates by reference all of the preceding paragraphs of the Petition for Damages as if fully set forth herein.
18. The State of Missouri recognizes a public policy imposing a duty upon operators of long-term care facilities to ensure proper sanitation.

19. Plaintiff developed a reasonable, good-faith belief that Defendant, through its employees, agents, and/or servants, violated the sanitation regulations in a way that could materially affect the health and safety of residents, by failing to control a dog.

20. As a result of Plaintiff's good faith belief that Defendant was in violation of State regulations, Plaintiff reported concerns to the administrator of Defendant, Aubrey Mills, and to Maize Arnold at the Missouri Department of Health and Senior Services.

21. Aubrey Mills and Maize Arnold are "proper authorities" within the meaning of R.S.Mo. Section 285.575(3).

22. Plaintiff was terminated on June 12, 2019, soon after reporting concerns.

23. Upon information and belief, Plaintiff's termination was motivated by Plaintiff's reporting of the serious misconduct by Defendant and/or the unlawful acts of Defendant described in this Count I to proper authorities, in violation of R.S.Mo. Section 285.575.

24. As a direct and proximate cause of Defendant's termination of Plaintiff in violation of the Whistleblower's Protection Act, the Plaintiff has incurred and will continue to incur lost income and benefits that she would have otherwise earned. Plaintiff is entitled to compensatory damages as a result.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant on Count I of the Petition, for a finding that the Defendant's termination of Plaintiff's employment violates R.S.Mo. Section 285.575, for an award of compensatory and liquidated damages, for her reasonable attorney fees and costs expended, pre-judgment and post-judgment interest as provided by law, and for such other and further relief as the Court deems just and proper, including equitable relief to the fullest extent allowed by law.

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**STIPULATIONS**

Plaintiff Chris Whistler and Defendant Oak Gardens Earth Residence stipulate to the following:

- (1) The signatures on Exhibit 2 belong to Aubrey Mills.
- (2) Plaintiff drew Exhibit 1 while making her statement and both parties further agree that its contents are accurate and a smaller scale from the original.
- (3) OGER is a long-term care facility as that term is used in Exhibit 7.
- (4) Exhibit 9 is a copy of an email that originated from the email address assigned to Aubrey Mills at Olive Gardens.
- (5) The parties agree that the only materials used to argue pre-trial motions are those provided in the case packet and the Rules of Evidence.

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HELP IS ON THE  
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## Jury Instruction 1

### Verdict Directing--Wrongful Discharge in Violation of Public Policy (Whistleblower's Protection Act)

Your verdict must be for plaintiff if you believe:

First, plaintiff is a protected person, meaning that plaintiff reported serious misconduct of the employer that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated under statute, and

Second, defendant discharged plaintiff, and

Third, such conduct of plaintiff as submitted in the First paragraph (above) was the motivating factor in the defendant's decision to discharge plaintiff, meaning that the plaintiff's report actually played a role in and had a determinative influence on the decision to discharge plaintiff; and

Fourth, as a direct result of his/her discharge, plaintiff sustained damage.

[unless you believe plaintiff is not entitled to recover by reason of Instruction Number 2].

Source: R.S.Mo. Section 285.575, enacted 2017.

## Jury Instruction 2

### Affirmative Defense Instruction

Your decision must be for the defendant if:

(a) The plaintiff is a supervisory, managerial, or executive employee or an officer of his or her employer and the unlawful act or serious misconduct reported concerns matters upon which the plaintiff is employed to report or provide professional opinion; or

(b) The proper authority or person to whom the plaintiff makes his or her report is the person whom the plaintiff claims to have committed the unlawful act or violation of a clear mandate of public policy.

Source: R.S.Mo. Section 285.575, enacted 2017.

## **STATEMENT OF CHRIS WHISTLER**

1 I was born and raised right here in St. Louis, Missouri, and I have lived  
2 here all my life. I dropped out of high school in the middle of 10<sup>th</sup> grade, after I  
3 turned 16, so I could marry my high school sweetheart. I was a stay-home  
4 parent until my sweetheart turned into a snake and left me for a champion  
5 skateboarder. My spouse took off suddenly after my second child, Amy, was  
6 born. So now I am a single parent raising my two small children, Amy (age 5)  
7 and Bobby (age 7), who have never known my spouse. I had to find gainful  
8 employment so I went to work as a dishwasher at a local restaurant just to  
9 make ends meet. I worked at the restaurant for a few years until I landed a job  
10 as a cook at Oak Gardens Earth Residence ("OGER"), a local long-term care  
11 facility, or nursing home. I worked there from January 3, 2017 to June 12,  
12 2019, when that bottom-dweller good-for-nothing useless Director of Nursing  
13 fired me. I was out of work for three months until I got a job with the same  
14 hours and pay on September 12, 2019. My lawyer says that I can file a lawsuit  
15 because it is against the public policy of this State for the Director of Nursing  
16 to fire me. If I win, I can pay for little Amy's dance lessons and Bobby's karate.

17 I applied for the cook position at OGER by filling out an application in  
18 person. I got a call on my cell phone a few days later from Ollie, the Kitchen  
19 Manager, who asked me to come in for an interview. I was so excited! I first met  
20 with Ollie and told him I had no experience cooking other than heating up  
21 pizza rolls and hot dogs for the kiddos but I sure could follow the directions  
22 and I would do just fine. He asked me if I had experience with the elderly. Do I

23 ever! I have a 75-year-old grandpa who is still out takin' care of his farm in  
24 Southern Missouri, helping deliver baby calves, feeding them, bush hoggin' and  
25 rakin' and all kinds of things. I love taking the kids there. We go at least twice a  
26 year! My grandpa is super into the St. Louis Cardinals. He also loves the  
27 Boston Bruins because his dad, my great grandpa, was from Boston. He got me  
28 into hockey and I am a huge Bruins fan now myself. So I have definitely been  
29 around old folks. At the end of the interview, the Director of Nursing, Aubrey  
30 Mills, walked in and gave me a job description. Yeah that is it – Exhibit 3.  
31 Aubrey asked me if I could do it and I said I sure could and I was told I could  
32 start the next day!

33         As it turns out, Aubrey is in charge of everything and everyone. The  
34 Director of Nursing is actually the main administrator at OGER. The Director of  
35 Nursing calls all the shots. My direct supervisor was apparently Ollie the  
36 Kitchen Manager, who did the cooking in the morning, and I did the cooking  
37 during my shift. We basically did the same job, except he ordered the food. I  
38 was paid hourly.

39         Everything seemed fine until Aubrey showed up one day with this  
40 mongrel called "Poopsy." Yeah, that's a picture of that mangy mutt – Exhibit 6.  
41 I despise everything canine – especially Poopsy. Poopsy is an untrained puppy.  
42 Aubrey first brought her into the facility as a sort of "gift" to the residents.  
43 Aubrey told everyone that Poopsy was a "therapy pet" but everyone knew that it  
44 was Aubrey's own puppy and Aubrey was just bringing it to work. The "therapy  
45 pet" thing was just an excuse to get all of the staff at OGER to train that dumb



46 dog for Aubrey. Real therapy pets are trained by professionals BEFORE they  
47 come to the facility. Poopsy was not a trained therapy pet. She did nothing but  
48 urinate and defecate all over the nursing home all the time.

49         The facility was set up like a pentagon. Here, I will draw it for you based  
50 on my memory. This is a diagram of OGER (Exhibit 1). Every time I walked the  
51 halls near the resident rooms, I would find little yellow puddles on the floor and  
52 evidence of defecation. I figured one day someone would slip on a puddle and  
53 sue this place and that would finally put an end to that silly therapy dog  
54 nonsense. Every time I would find that nasty dog anywhere in the facility, I  
55 would take it to Aubrey's office and stick it in the crate. That is where it  
56 belonged if you ask me. Then five minutes later, that dog would be back out.  
57 The residents in the home agreed with me, too. They also thought it was wrong  
58 for Aubrey to bring that dog to work and expect all of us to clean up after it.  
59 One time I even found evidence in the kitchen. I took a picture of it – Exhibit 5.  
60 I went straight to Aubrey and handed Aubrey gloves and cleaning supplies and  
61 told Aubrey to clean it, yelling, "All the residents are tired of this disgusting  
62 dog!" Aubrey told me to keep the dog out of the kitchen. I am sure most of the  
63 residents in that part of the pentagon could hear me. I wanted them to know  
64 that I was doing my best to help. I don't know who cleaned it, but I know the  
65 puddle disappeared.

66         After the dog had been let loose to destroy OGER for over a month, I  
67 again approached Aubrey in her office. It was the morning of June 10, 2019. I  
68 told Aubrey, "You should take care of your own dog, train your own dog, and

69 keep it at home. If you have it here at OGER, you should lock it in your office.  
70 Every time I prop open the kitchen door, that dog runs in.” In response, Aubrey  
71 told me, “Poopsy cannot get through the kitchen doors when they are closed.  
72 So close them and don’t prop them open, even if you find that makes your job  
73 harder. Like I told you last month, if you are in the kitchen when Poopsy runs  
74 in, take her out. That is your job so make sure to remove Poopsy if Poopsy goes  
75 in there.” I told Aubrey, “That is impossible for me to do since I am handling  
76 food and I cannot touch a dog. I have to change my gloves every time. I am not  
77 going to be able to do that. Plus, I like to keep the door propped open so I can  
78 keep an eye on the dining room and the residents, and it is easier to  
79 communicate with them.” Aubrey then told me to just cook food, serve food,  
80 and not talk to residents about anything other than whether they want  
81 ketchup with their French fries and things like that. Aubrey then claimed I had  
82 upset a resident by talking to a resident, Bea Toven, about not liking Poopsy  
83 and by being rude to Poopsy. Aubrey claimed I made Bea cry. I was thinking to  
84 myself, “Sure I definitely talked to lots of residents about how terrible that dog  
85 was, but I don’t remember any specific conversation with Bea, and I never  
86 made Bea cry.” I do remember one time that Bea spilled her milk, so I threw a  
87 towel over it from the kitchen. I did not see her cry over the spilled milk. I  
88 decided not to bring up the towel incident and just say “OK” to Aubrey. I was  
89 already on her bad list over not liking that dumb dog that I did not want to  
90 argue with her about what I did or did not say to residents or Bea.

91           On June 11, I called the Department of Health and Senior Services  
92   ("DHSS") and asked to speak with the person who inspects OGER, and he  
93   transferred me to Maize Arnold. I told Maize Arnold that we had a dog in the  
94   nursing home that was entering the kitchen. Maize said the Department would  
95   probably issue a citation or shut down the place if the dog were not removed  
96   from the facility.

97           The next day, on June 12, 2019, the Blues were in Game 7 of the Stanley  
98   Cup finals against the Boston Bruins. Aubrey decided it would be fun to move  
99   the big screen into the dining room and serve tailgate food like hot dogs and  
100   nachos - I am really good at cooking those, so that was no problem - to the  
101   residents. I agreed to work overtime since Ollie, our Kitchen Manager, already  
102   had plans with friends. Lots of nursing staff was in the dining room. I was the  
103   only one in the kitchen - I was also the only person at OGER wearing a Bruins  
104   t-shirt that night. A resident, Mr. Stillman, - no relation to Tom - asked me why  
105   I was a traitor. I told him that my Grandpa was a Bruins fan and I inherited it.  
106   Moments later, the final buzzer left the Blues Stanley Cup Champions. Right  
107   then, Mr. Stillman fell over on the dining bench and was unconscious. At least  
108   he got to see his precious lunkheads beat my Bruins. I had to return to my  
109   post in the kitchen but I believe he was rushed to the hospital.

110           After Mr. Stillman was taken away, Aubrey came up to me and said,  
111   "You're fired! I told you to stop interacting with residents about things other  
112   than their food! Now look what you did to Mr. Stillman! You can take your

113 Bruins loving, dog-hating big mouth up to the main office, turn in your badge,  
114 and scoot!”

## **STATEMENT OF MAIZE ARNOLD**

115 I am originally from Iowa City, Iowa, where I was born and raised. I  
116 graduated from high school in 2012 – the same year that Mizzou joined the  
117 SEC. I always wanted to go to college at an SEC school, so I jumped at the  
118 opportunity to go to a place that was relatively close to home. I graduated in  
119 2016 with a bachelor’s degree in health science, with an emphasis on  
120 leadership and policy, then stayed at Mizzou for one more semester and  
121 completed my graduate certificate in health ethics. My certification classes  
122 included “Health Policy and Politics” and “Health Law: The Regulation of  
123 Providers.” Immediately upon graduation, I was offered a job as an Inspector in  
124 the Long Term Care Division of the Missouri Division of Health and Senior  
125 Services. I have held the same position ever since.

126 As Inspector, my duties include inspecting long term care facilities for  
127 compliance with the Division’s regulations. We schedule regular visits to the  
128 facilities in our territories, and sometimes we make surprise visits, particularly  
129 when we receive a complaint that a regulation has been violated. Complaints  
130 can be initiated by anyone including a patient, a patient’s relative, or an  
131 employee or member of the public. OGER was one of the facilities in my  
132 geographic territory. When I receive a complaint at one of my facilities, I do an  
133 on-site investigation. Usually if I find any potential failure to comply, I issue a  
134 Statement of Deficiencies. The Statement of Deficiencies is based on my

personal opinion. In response, the facility is required to provide a plan of correction that will bring the facility into compliance with the regulations.

On June 11, I received a phone call from Chris Whistler, a cook at OGER. Chris told me that OGER was allowing a dog to roam freely throughout the facility and into the dining room areas and food preparation areas. Chris also informed me that residents objected to the dog being present in the dining room but the facility did not adhere to resident desires. Also, Chris said that the dog had free run of the kitchen and food preparation areas because the dog was not locked in a crate or office during dining hours and the dog would find its way into those areas.

I immediately looked into the State regulations set forth by the Missouri Division of Health and Senior Services (DHSS). Since OGER is a long term care facility as defined by Missouri Statute, it must adhere to the Code of State Regulations, 19 CSR 30-87.030: Sanitation Requirements for Food Service. This section includes 97 specific paragraphs containing rules, sometimes two or three per paragraph, pertaining solely to food service. The rules range from requiring that glasses and cups be stored inverted, to forbidding the use of wood, other than hard maple, for food surfaces. Paragraph 9 provides that live animals must be excluded from food preparation areas, and dogs and cats can only be in dining areas if residents do not object. I mean there are so many regulations that it is literally impossible to follow every one of them all the time. We at DHSS get it. But I think some of the more important ones should be

157 taken very seriously so we can make sure residents don't get sick. Yes, Exhibit  
158 7 is a copy of the regulations specific to food service at long term care facilities.  
159 This set of regulations applied to OGER.

160 I decided I would pay a surprise visit to OGER on the morning of June  
161 12, 2019. When I arrived, I was greeted by the office assistant, Eliza. I told her I  
162 had come to investigate a complaint I had received about a dog. The office  
163 assistant immediately responded, "Oh you must be talking about Chris. Chris  
164 hates the puppy. Chris probably called you and told you we were breaking  
165 some law in having a puppy." I told her that I could not reveal the identity of  
166 the complainant, only that it was a cook in the kitchen who was concerned  
167 about a possible legal violation. The office assistant told me she would make  
168 sure to locate the Director of Nursing who could answer questions. I saw her go  
169 to the hall and stop Aubrey in her tracks. She said something to Aubrey, and I  
170 overheard Aubrey say something about taking care of that cook. Then she  
171 made a motion with her hand – she stuck her thumb up and out like a  
172 hitchhiker and pointed her thumb a few times at the front door as if to say  
173 someone or something needed to leave.

174 A few minutes later, both of them returned to the front office with about  
175 half of the nursing and custodial staff. We sat down around a conference table  
176 in the main office and I asked questions that centered on the dog, its  
177 whereabouts, whether residents objected to it being in the facility, and whether  
178 it was permitted to enter the kitchen. The office assistant told me that the

179 puppy's name was Poochie, and that Poochie would occasionally have  
180 accidents around the home, but the accidents were always cleaned up. The  
181 office assistant confirmed that the dog was permitted to be in the dining room  
182 and, to her knowledge, no residents had objected. Aubrey told me that Poochie  
183 was not allowed to go into the kitchen, but if she managed to squeeze into the  
184 kitchen, the cook was required to take Poochie out.

185         After our meeting, I walked out of the main office. I examined the kitchen  
186 and Poochie was not in there. She was in the courtyard doing her business. I  
187 knew I needed to talk to Chris in more detail to complete the investigation. I  
188 told the staff the investigation was not complete and I would get back to them.  
189 That night, the Blues won the Stanley Cup! I completely forgot about the  
190 complaint because I was making plans to attend the parade a few days later. I  
191 camped out on Market Street on Friday evening and I got to touch the Cup  
192 when Maroon had it. It was great. Then I went on vacation for a week and by  
193 the time I got back, I called OGER to follow up on my investigation and asked  
194 to talk to Chris. Eliza told me Chris no longer worked at OGER. I think if I had  
195 been able to talk to Chris again, I probably would have issued a Statement of  
196 Deficiencies. I just needed more specific information about which residents had  
197 lodged complaints, Chris' responsibilities with respect to the dog and kitchen,  
198 and the picture she had taken of the dog's contamination so I could follow up  
199 on any sanitation issues that may have been present.



200           Later I learned that the facility assigned a custodian to put Poochie on a  
201   leash during dining hours to make sure she did not go in the kitchen at all, or  
202   go into the dining hall when residents were present. I expect that took care of  
203   any issues that may have been present.

204           Of course, many long term care facilities are finding it beneficial to bring  
205   in pets for the residents to enjoy. We at DHSS recognize the potential emotional  
206   benefits that animals bring to the elderly and infirm. Research suggests older  
207   adults live longer, healthier, happier lives when they interact with pets on a  
208   regular basis. Pets provide companionship and unconditional love that  
209   improves the overall health of aging individuals. Loving a pet gives older adults  
210   more reasons to get up in the mornings. So we at DHSS do not want to make it  
211   impossible for a facility to have a pet as long as they comply with the  
212   regulations. We feel so strongly that pets are beneficial in long term care that in  
213   2013, the long term care division of DHSS dedicated an entire issue of "New  
214   Generations" magazine to the benefits of pets in long term care homes. Exhibit  
215   8 is a copy of Volume 11, Issue 2.

## **STATEMENT OF FRANCIS/FRANCES PELLEGRINI**

216 I don't know why Chris wants me to testify and I told him/her I was not  
217 interested but I guess I don't have a choice. His/her attorney sent me a  
218 subpoena so if I don't show up, I get thrown in jail. So I guess I have to answer  
219 questions but I don't want to. I am tired of dealing with legal issues involving  
220 Aubrey Mills.

221 I work as a custodian at OGER. I haven't always worked there. I actually  
222 worked at Deaconess Hospital from 2001-2004, the same place where Aubrey  
223 Mills worked as a registered nurse. At Deaconess Hospital, I was responsible  
224 for collecting soiled linens from patient rooms, cleaning them, and restocking  
225 the laundry closets with fresh linens. Aubrey was the charge nurse on the  
226 tenth floor, meaning that she assigned nurses to patients at the beginning of  
227 each shift. One time, in December 2002, I overheard an LPN named Bob tell  
228 Aubrey, who was his supervisor, that he believed the system the hospital had  
229 in place for recording patient health information violated the Health Insurance  
230 Portability and Accountability Act (HIPAA) because it did not keep patient  
231 information confidential. Bob stopped working at Deaconess in February 2003.  
232 After Bob left, he sued Deaconess hospital claiming Aubrey had wrongfully  
233 discharged him for complaining about HIPAA violations. I was called to testify  
234 about the conversation I overheard between Bob and Aubrey. I had no  
235 information about whether the nurse's termination had anything to do with his

236 complaint. I did not even know he was fired until I got a call from his attorney  
237 asking me to go to a deposition related to his whistleblower lawsuit.

238         Then, it just so happened that in 2008, I landed a higher paying job at  
239 Olive Gardens Nursing Home where I worked as a custodian. My job was more  
240 general – keeping hallways clean, emptying trash, cleaning up the dining room  
241 at the conclusion of mealtimes. I was even given an office and a computer at  
242 Olive Gardens. My managers used email to communicate special needs to me  
243 like notices to clean the main office and conference table after a meeting and  
244 other janitorial tasks. Once I received an email that probably was not meant for  
245 me. My name is Frances/Francis Pellegrini, but the home's administrator's  
246 name was Francine Pellegrina. That email is Exhibit 9. I had to get dragged to  
247 court when Roberta, the nurse mentioned in the email, filed a lawsuit alleging  
248 wrongful discharge in violation of public policy. Roberta claimed she was fired  
249 from Olive Gardens after reporting Medicaid fraud, and I had to testify that I  
250 had, in fact, received that email. What a nuisance.

251         Now here I am again, in court, to give my testimony relating to things  
252 Aubrey Mills said or did. I cannot believe that I have ended up working in the  
253 same place as Aubrey Mills three times! Well, I'll tell you what, this time I have  
254 no idea whether Aubrey overheard Chris complain about Poochie, or even if  
255 Chris ever complained about Poochie, or sanitation regulations, or anything at  
256 all. But what I can tell you is that Poochie is a nightmare to clean up after.  
257 Poochie is seven months old and still cannot figure out where to go to the

258 bathroom. I find little Poochie-sized defecation and urination nearly every day  
259 that I work at OGER. I always clean it immediately. I wipe up the excrement  
260 and immediately place it in a plastic biohazard bag and discard it, then I use  
261 disposable paper towels. I spray the area with a good, high quality disinfectant  
262 spray and make sure it is fully removed. None of the floors have carpeting,  
263 thank goodness. To my knowledge, no resident or employee has ever stepped  
264 on it or slipped on it, and I don't believe it has ever contaminated the food – at  
265 least not on my watch. I am only one of three custodians who work at OGER.

266 I do remember a time that Aubrey Mills came to me and asked me to  
267 clean up the floor in the kitchen. It was at 2:00 in the afternoon - a time when  
268 food was not being served so no one was in there. No one is allowed to go in the  
269 kitchen except the Kitchen Manager, cook and dishwasher, and both the  
270 Kitchen Manager and the dishwasher were off work that day. The three of them  
271 are the only people who do the cooking or cleaning of the kitchen. The doors  
272 are really heavy and they lock when they shut. They have a push bar to open  
273 them so someone must have let Poochie in there, and I have a strong suspicion  
274 that it was Chris, but I don't know for certain. I did clean it really well. I did a  
275 good job and I am certain there was no contamination of the food or any tables  
276 or equipment.

277 I would occasionally find a few Poochie puddles in the dining room, but  
278 there is always so much spillage on the floor that it is honestly hard to tell  
279 what is what. Either I or one of the other custodians mopped the dining room

280 floor every night after dinner. Speaking of spillage, it is not out of the ordinary  
281 for a resident to have an accident, and those are much more significant in  
282 terms of volume, whether it's bodily fluid or food and beverage spills. All of  
283 those were common. The residents are wonderful people and I am happy to be  
284 able to help them live comfortably, but they are elderly and some are sick, so  
285 some of that is to be expected.

286 I was off work the night the Blues won the Stanley Cup, but the next day  
287 everyone was talking about the Blues, Mr. Stillman, and Chris getting fired. I  
288 had to clean up the main office because everyone had used the conference  
289 table as the pot-luck storage area the day before, and it was covered in blue  
290 and yellow icing, blue and yellow sprinkles, and there were still streamers  
291 taped to the walls. While I was in the main office, Aubrey walked in to talk to  
292 Eliza, the office assistant. I was under the table picking up the sprinkles when  
293 I overheard Aubrey say to Eliza, "I sure hope Mr. Stillman recovers. That poor  
294 man had a serious heart condition. I told Chris to keep her mouth shut and do  
295 her cooking job so she would not upset the residents, but she just could not  
296 hold her tongue and mind her own business. And now Mr. Stillman is in a  
297 coma! Firing Chris may save our other residents from having the same thing  
298 happen to them as what happened to Mr. Stillman! Plus, now that Chris is out  
299 of here, maybe Maize will stop breathing down my back about not liking my  
300 dog." Eliza responded, "It's a good thing Chris is gone. Lots of residents  
301 complained that she talked too much and was really nosy. But we need to find

302 a new cook – maybe this time we should look for one who is not so  
303 insubordinate!”

304         Then Aubrey noticed I was in the conference room after I hit my head on  
305 the table while trying to get up. She seemed surprised to see me. She asked me  
306 if I would start putting Poochie on a leash during dining hours to ensure that  
307 Poochie could not enter the kitchen or dining room. I had no problem with that.  
308 I just kept Poochie with me on a leash. At least I now get the chance to take  
309 Poochie to the courtyard to do her business, and she is finally starting to figure  
310 it out.

## **STATEMENT OF AUBREY MILLS**

311 I am the Director of Nursing at Oak Gardens Earth Residence. We are a  
312 very small but quite lovely Residential Care Facility as that term is defined by  
313 the DHSS regulations. Larger residential homes would typically employ a  
314 Director of Nursing who reports to a Facility Administrator, but at OGER, I  
315 serve in both roles.

316 I have a bachelor's degree in nursing from Deaconess Hospital, back  
317 when it had a School of Nursing. I worked for about five years as a Registered  
318 Nurse at Deaconess Hospital, then I went back to school and got my master's  
319 in nursing from Saint Louis University. I also have a master's degree in health  
320 care administration from Saint Louis University. I worked as a Director of  
321 Nursing for a larger facility, Olive Gardens, in West St. Louis County, for 10  
322 years until 2016, when I applied for and obtained the position of Director of  
323 Nursing at OGER. I have the responsibility of caring for the patients' medical  
324 needs, ensuring compliance with the many regulations, implementing policies  
325 consistent with Missouri State public policy, and also the responsibility  
326 supervising the entire staff. My job duties include overseeing staff, supplying  
327 medical supplies, and financial matters.

328 I have a specific interest in pet therapy for elderly and disabled people.  
329 Pets can generate a happier, less stressful, and healthier lifestyle for all people.  
330 For these exact same reasons, more and more nursing homes are starting to  
331 incorporate pet therapy in their programs. The most common type of pet  
332 therapy is visitation therapy. It allows residents to experience the benefits of

333 having pets around without the magnitude of responsibility animals require.  
334 Cats and dogs are the most commonly used animals for visitation therapy. I  
335 have been asked to speak at Residential Care Facility seminars for new  
336 administrators across the state on the benefits of pet interaction with  
337 residents, and I have written and published two articles in Nursing Notes, “How  
338 to Incorporate Pet Ownership in Residential Facilities,” and “Woof There It Is:  
339 The Dog Arrives.”

340         In late April 2019, I saw a notice in the Riverfront Times that a number  
341 of puppies had been seized from a puppy mill somewhere in the State and had  
342 been brought to the Humane Society headquarters on Macklind. I raced over  
343 and found the most adorable little 8-week old Maltipoo (that is a Maltese-  
344 Poodle mix), weighing slightly more than one pound. I fell in love with this little  
345 puppy the moment I saw her. I decided to name her Poochie. Poochie is such a  
346 wonderful little dog. I thought, “Wouldn’t it be so special to take Poochie with  
347 me to OGER so that all the residents could enjoy her?” I decided that it would  
348 be fun to have a therapy pet at OGER so I started taking her to work. Of course  
349 I was not able to dog-sit all day long, and that would not have been good for the  
350 residents. I wanted them to have the chance to interact with Poochie. You ask  
351 me if Poochie was potty trained? Ha! You must know that 8-week old puppies  
352 definitely have accidents every now and then, but Poochie was well on her way  
353 to figuring it out. There is a lovely courtyard in the middle of the facility, with  
354 five doors that went to the courtyard. The courtyard is grassy and enclosed,



355 and a great area for a pet. It was the perfect set-up for a successful therapy  
356 dog!

357 I held a meeting with all the nursing and custodial staff as soon as  
358 Poochie was moved to the facility. The meeting included all the Registered  
359 Nurses, Certified Nurse Assistants, and our three full-time custodians. They  
360 are the employees who are typically roaming the halls helping residents, where  
361 Poochie might be also roaming. They needed to know to let Poochie out into the  
362 courtyard frequently. I also notified them that if anyone saw any evidence of a  
363 little Poochie-sized accident - of course, Poochie's puddles would not likely be  
364 larger than a McDonald's Happy Meal hamburger patty, and the little poops  
365 would not be bigger than a baby carrot - they needed to clean them up  
366 immediately or find custodial staff to take care of it. No one expressed a  
367 problem with this. I don't recall any kitchen staff being present at the meeting.

368 Of course I recall when Chris Whistler was hired. As a nurse, I really  
369 don't pay that close attention to the kitchen staff employees. I mean, I have a  
370 lot on my plate and we have a Kitchen Manager, Cook and dishwasher. Ollie is  
371 the Kitchen Manager and Buddy is the dishwasher. Breakfast is served from 6-  
372 9, lunch from 11-1, and dinner from 4-6. There is always either the Kitchen  
373 Manager or Cook present, so there is always a cook in the kitchen as long as  
374 the dining room is open. The job descriptions for the Cook and Kitchen  
375 Manager are included as Exhibits 3 and 4, respectively. Those documents were  
376 provided to both of them when they started work.

377 Chris stands out because he/she was always causing a lot of problems.  
378 Chris just could not stand to stay in the kitchen and do his/her job. Chris was  
379 a social butterfly with the residents. He/she was always running around in the  
380 halls when he/she should have been in the kitchen. I received complaints from  
381 nurses that he/she would strike up conversations and get the residents all  
382 riled up. He/She was always raising his/her voice and inciting people,  
383 including residents. I cannot recall the specifics of all the reports I received, but  
384 I do remember two major events. One of the residents, Jack/Jackie Beehive,  
385 reported to me that Bea Toven had become upset because Chris was saying  
386 horrible things about Poochie and mistreating Poochie. Jack/Jackie Beehive  
387 reported that Bea had been in tears after the altercation. Bea is a somewhat  
388 fragile elderly woman who is taking anti-depressants, and she needs to control  
389 her mood or she may suffer additional health problems. After Jack/Jackie  
390 Beehive came to me, I went straight to Chris and told him/her that he/she had  
391 upset a resident with his/her tone and his/her discussion, and he/she was no  
392 longer to have any conversations with residents unless the conversations were  
393 related to what food they wanted. I explained to Chris that some residents are  
394 very fragile, some have blood pressure or other health issues, and inciting them  
395 or upsetting them can be dangerous to their health. Chris indicated he/she  
396 understood and would not engage with residents again.

397 You asked me if Chris had any problems with Poochie? Yes. Chris did not  
398 like dogs. He/she came to me and complained that Poochie was my dog, not

399 OGER's dog, and he/she did not want any responsibility for my personal dog. I  
400 told him/her Poochie was the facility dog, I had sold him to the facility by  
401 contract – Exhibit 2, but he/she did not need to have any responsibility for  
402 Poochie other than keeping Poochie out of the kitchen. I explained to him/her  
403 that he/she needed to manage the kitchen and make sure Poochie was not in  
404 there. It should have been an easy task – there are doors on the kitchen that  
405 Poochie could not get through unless the door was opened by a person. Chris  
406 was the only person who went in and out of the kitchen so he/she would  
407 always be there if Poochie were to ever escape from the dining room.

408 Chris did complain about being bothered by Poochie and not wanting to  
409 deal with Poochie in the kitchen, but he/she never mentioned any regulations  
410 to me. He/she never mentioned that he/she believed OGER was in violation of  
411 any regulation related to Poochie or anything else. He/She did threaten that  
412 “DHSS could shut us down for having a dog,” but that was a ridiculous  
413 statement because DHSS encourages pets in residential care facilities. I know  
414 because I have read “New Generations” magazine for years, and I recall reading  
415 Exhibit 8 in 2013.

416 On the evening of June 12, I stayed late to enjoy the festivities of the final  
417 Stanley Cup game with the residents. I had stepped out of the dining hall to  
418 catch up on paperwork in my office. I figured the Blues had it won since they  
419 were up 4-1 with only a few minutes left. Plus, I wanted to call my son in  
420 Nashville to celebrate the win. So I wasn't there at the final buzzer and I was

421 not there when Mr. Stillman collapsed. Immediately after the game ended, I  
422 was on the phone with my son, and one of our custodians ran into my office  
423 and said, "Come quick! It's Mr. Stillman! We called a bus already." So I ran to  
424 the dining hall and Mr./Mrs. Beehive shouted, "It was that nasty cook! He/she  
425 got him so upset! Did you know he/she is a Bruins fan? He/she was talkin' all  
426 kind o' smack and Mr. Stillman just fell kerplunk over because his/her big trap  
427 won't stay shut!"

428         Once Mr. Stillman was on his way to the hospital, I found Chris and I  
429 told him/her that he/she needed to turn his/her badge in to Eliza and that  
430 his/her assistance was no longer needed in the kitchen. I told Chris that  
431 he/she had been previously warned to not talk to residents and he/she failed  
432 to refrain from chatting up Mr. Stillman, causing detrimental health problems.  
433 I was happy to be rid of that cook. He/she was not a dog person and I have no  
434 tolerance for that.

435         I know Chris is saying that I fired him/her because he/she complained  
436 to DHSS on June 11. I did not know that he/she contacted DHSS, or that a  
437 complaint was even filed with DHSS. I do recall Maize Arnold coming in for a  
438 visit on the morning of June 12 to do a surprise inspection. I was not aware  
439 that Maize was investigating a complaint. My office assistant never mentioned  
440 anything about an official complaint to DHSS. When she went to get me, she  
441 told me Maize had arrived to ask about Poochie, and I motioned for her to let  
442 Poochie out to do her business. I don't think I said anything about the cook.

443 Maize told me he/she had received a report about a new therapy dog and  
444 wanted to meet Poochie. We introduced him/her to Poochie. All the staff at the  
445 meeting informed Maize that when Poochie had accidents, they were cleaned  
446 up quickly. Chris was not at the meeting with Maize. Maize did not issue a  
447 Statement of Deficiencies or ask for us to make any changes to what was  
448 currently happening with Poochie.

449 As for Mr. Stillman, I was correct that Chris should never have spoken to  
450 him. Mr. Stillman's doctor thinks that he suffered a stress-induced heart  
451 attack due to Takotsubo syndrome, even though even I know that Takotsubo  
452 syndrome generally affects women and not often men.

453 Francis/Frances Pellegrini is one of our custodians. I did not fire Bob at  
454 Deaconess hospital because of his HIPAA concerns. Bob had years of  
455 performance problems and I think he made that report in order to set me up,  
456 knowing I would have to fire him for his performance problems. Also, I did not  
457 send that email to Francis/Frances at Olive Gardens. Someone must have gone  
458 into my office and sent it. I would never have sent anything like that. Plus, I  
459 sent emails all the time to Francine Pellegrina and I would not have made that  
460 mistake in identity. I have always suspected that Roberta snuck in my office  
461 and typed it herself. She was pretty sure she was getting fired the next day so I  
462 think she set me up.

## STATEMENT OF JACK/JACKIE BEEHIVE

463           My name is Jack/Jackie Beehive. I have lived at OGER for about three  
464 years, ever since I suffered a stroke. I have made a substantial recovery, but I  
465 have difficulty hearing from my right ear. I don't need a hearing aid and I  
466 refuse to wear one because my left ear still works well enough. My eyesight is  
467 also not perfect but I can see well enough to recognize faces. I am 87 years old,  
468 so my kids think I need to be in this nursing home because I no longer drive,  
469 and they are afraid I am too weak to live on my own. They don't want me to fall  
470 down. Kids these days are so worried about everything. They come to visit me  
471 enough here so I really don't mind, but I do miss my house. I had a golden  
472 retriever named Cinnamon who was my best friend after my kids were gone  
473 and my spouse had passed. I really miss him.

474           One of the best things that happened at OGER was when Nurse Aubrey  
475 brought his/her puppy to work. It is a little peach furball that runs around all  
476 over the home. Sometimes I leave my door open when I am watching TV.  
477 Poochie comes in and jumps right up in my lap. Our favorite is "The Price is  
478 Right." She runs up and down the halls as if she were in a race but there is no  
479 other dog to race! Poochie has made me so happy. I used to be lonely and  
480 wonder what I was going to do from day to day, but now I wake up and I find  
481 that little puppy - or she finds me - and I pet her as much as she wants. She  
482 loves me.

483 Poochie used to go in the dining room during meals. I think I am her  
484 favorite because she would usually sit with me. It started that she would sit on  
485 my feet, but then she got interested in my food, so I let her sit on my lap.  
486 Occasionally I would slip her a treat on my lap so no one would notice. I think  
487 she might have snatched a few licks off my plate when no one was looking but  
488 who knows! Who cares anyway? Dog mouths are very clean, I am sure you  
489 have heard that. They don't let Poochie in the dining room any more so I really  
490 miss her when I eat. At least I still get to see her in the halls and in my room. I  
491 also miss her a lot when Aubrey Mills goes on vacation. She takes Poochie with  
492 her when she will be out for more than a day.

493 Some of the more picky residents in the home did not like having Poochie  
494 in the dining room. I remember Bea Toven lodging complaints to Chris the  
495 cook. One day when I was sitting in the dining room, I heard Bea tell Chris that  
496 she did not like the dog being in the home at all and wanted her out.  
497 Fortunately Bea was only at the home for about two weeks.

498 Yes, sometimes I have seen Poochie make a little "present" for the staff. It  
499 happened in the dining room and hallways. It was never very much and I doubt  
500 the staff cared much – I mean they are nurses and custodians in a nursing  
501 home – I am sure they are trained to clean everything. It is better now that  
502 Poochie is older. When Poochie was a puppy, I saw her enter the kitchen and  
503 leave the kitchen, but I never noticed whether she left any "presents" there.

504 Every time she went in the kitchen, I did see Chris the cook shove her back  
505 into the dining room.

506 Chris did not like little Poochie. He/She was downright mean to that  
507 innocent little thing. He/She would give Poochie a little kick with her foot when  
508 he/she removed Poochie from the kitchen. I thought that was not necessary. I  
509 remember one time in particular. I was in the corner of the dining room near  
510 the plant. Bea was sitting at the table by the door to the kitchen. I saw Chris  
511 throw the little dog out the kitchen door. It looked like Poochie was dropped  
512 from a couple feet above the floor. Bea Toven told Chris that he/she should be  
513 nicer to that animal. Chris immediately got very angry at Bea. Chris started  
514 yelling obscenities such as calling Poochie a “poop monster” and a “pesty rat.” I  
515 saw Bea start to cry when Chris raised his/her voice. Bea is on a medication  
516 that affects her emotions, and she gets upset very easily. Chris was so  
517 infuriated about little Poochie that he/she managed to cause Bea to have an  
518 emotional episode. I decided to report this incident to Aubrey because Bea had  
519 become so upset. I was worried about her health. I went to Aubrey’s office and  
520 told him/her everything. Aubrey assured me that he/she would talk to Chris  
521 about his/her demeanor and warn him/her not to talk to residents unless it is  
522 for a food-service-related issue. Aubrey did not ask me any questions about the  
523 altercation between Chris and Bea.

524 I was there the night the Blues won the Stanley Cup. I was sitting at a  
525 table with Mr. Stillman. Chris surprised all of us with his/her support for the



526 Bruins – wearing a Bruins t-shirt. Doesn't he/she know he/she shouldn't do  
527 that? There was only about one minute left in the game and Mr. Stillman  
528 yelled, "The Bruins are going down!" Then Chris came over to our table and  
529 gave Mr. Stillman an earful saying, "The Blues play garage hockey and they are  
530 a dirty team of lunkheads! The Bruins are going to pull off a win, just you see!"  
531 Mr. Stillman's face turned really red, he leaned over and yelled to Chris that  
532 he/she was "out to lunch" and that his/her grandpa "needed to have a  
533 lobotomy." Then Mr. Stillman immediately passed out and could not be  
534 awakened. He was taken off in an ambulance. It is too bad he did not get to see  
535 the Blues finally win the Stanley Cup. Mr. Stillman has not returned. That  
536 cook must have killed him!

537 I love living at OGER. It is expensive to live at such a nice facility. About  
538 10 years ago, I gifted all of my money to my children, and kept enough to  
539 survive 10 years in this nursing home. Unfortunately, I have run out of money.  
540 Last month, I wrote a bad check to OGER. It bounced immediately and I told  
541 Aubrey I was sorry but I just don't have the funds to pay any longer.  
542 Fortunately he/she did not report me to the police, or I might have been in a  
543 lot of trouble. I asked my kids to pitch in so that I can stay there. I think they  
544 used most of the money I gave them, and now they are saying they will be able  
545 to pay starting in two months. I am hoping Aubrey will keep letting me live here  
546 until my kids are able to start paying again. I had a conversation with Aubrey  
547 in July 2019 about the problem, and I told him/her that I thought my kids

548 were going to start paying the monthly fees by November. He/She seemed  
549 upset at first, but then said he/she wasn't worried about the money because  
550 the nursing home was financially secure. Aubrey did mention that hopefully  
551 Chris wouldn't get a windfall at the October trial because that might affect the  
552 quality of care that OGER is able to afford for its residents. So I am really glad  
553 I get to testify today and help OGER.

## **STATEMENT OF DR. TAYLOR VERSE**

554 I am a physician at City Hospital in St. Louis, MO. I received my  
555 undergraduate degree in pre-med and history from the University of Missouri,  
556 and I completed medical school at St. Louis University School of Medicine  
557 where I received my M.D. degree. I did my residency at Saint Louis University  
558 School of Medicine. I am board certified in Internal Medicine, having completed  
559 the testing required to remain a member of the American Board of Internal  
560 Medicine for the last 20 years. I have a regular medical practice on Watson  
561 Road in St. Louis County.

562 Most of my patients are elderly, as I have a special interest in geriatric  
563 medicine. I am a member of AGS, or the American Geriatrics Society. I am on  
564 the committee for Geroscience. Members of this committee share a common  
565 interest in efforts to leverage our understanding of basic aging processes  
566 towards the discovery, validation and implementation of interventions to help  
567 promote health, function, and independence in late-life. I have spoken at three  
568 of the monthly meetings in the last 10 years. One of my speeches involved the  
569 benefits of pets in the promotion of independence in late-life.

570 Nursing homes have changed rather significantly since my medical  
571 school days. Nursing homes felt more like a hospital than a home: a sterile  
572 environment focused on meeting medical needs of the residents, with little to  
573 no focus on quality of life. Now nursing homes are starting to focus on the  
574 “home” part of that term. Many allow residents to remove draperies and replace  
575 with more aesthetically pleasing ones, and provide their own furniture. Some,

576 the better ones, allow visits from organizations that raise and train pets for the  
577 purpose of visiting the elderly. It is commonplace to find a nursing home with a  
578 resident pet these days, but that comes with a whole lot of responsibility.  
579 Nursing homes need to balance the benefits of the pet with the risk of having a  
580 tripping hazard, maintaining sanitation standards, ensuring updated shots,  
581 and preventing pet mischief that can result in sub-par medical care. It is clear  
582 to me that the Missouri Department of Human and Senior Services is  
583 committed to the public policy of having a safe pet presence in long term  
584 facilities. I have reviewed all of the statements of all the witnesses in this case  
585 and it is my opinion that OGER established policies and practices, during  
586 Chris's employment, that were sufficiently safe in terms of sanitation. The  
587 custodians cleaned up after Poochie and the rule was that the cook or kitchen  
588 manager had to keep Poochie out of the kitchen. I cannot find any examples of  
589 a time when any resident's health was actually compromised. Of course, it  
590 would have been a good idea to remove Poochie from Jack/Jackie Beehive's lap  
591 during his/her meal for a variety of reasons, Poochie's presence does not  
592 appear to have hurt anyone. Plus, I sometimes eat pizza while watching hockey  
593 with my Labrador retriever on my lap and I'm fine.

594 In addition to my own medical practice, I work in the emergency room at  
595 City Hospital one night per week. As luck would have it, I was scheduled to  
596 work in the emergency room the night of the final Blues Championship game. I  
597 recall an elderly man who was rushed to our ER shortly after the Blues game  
598 ended. I recall the time because all of the staff, myself included, were playing

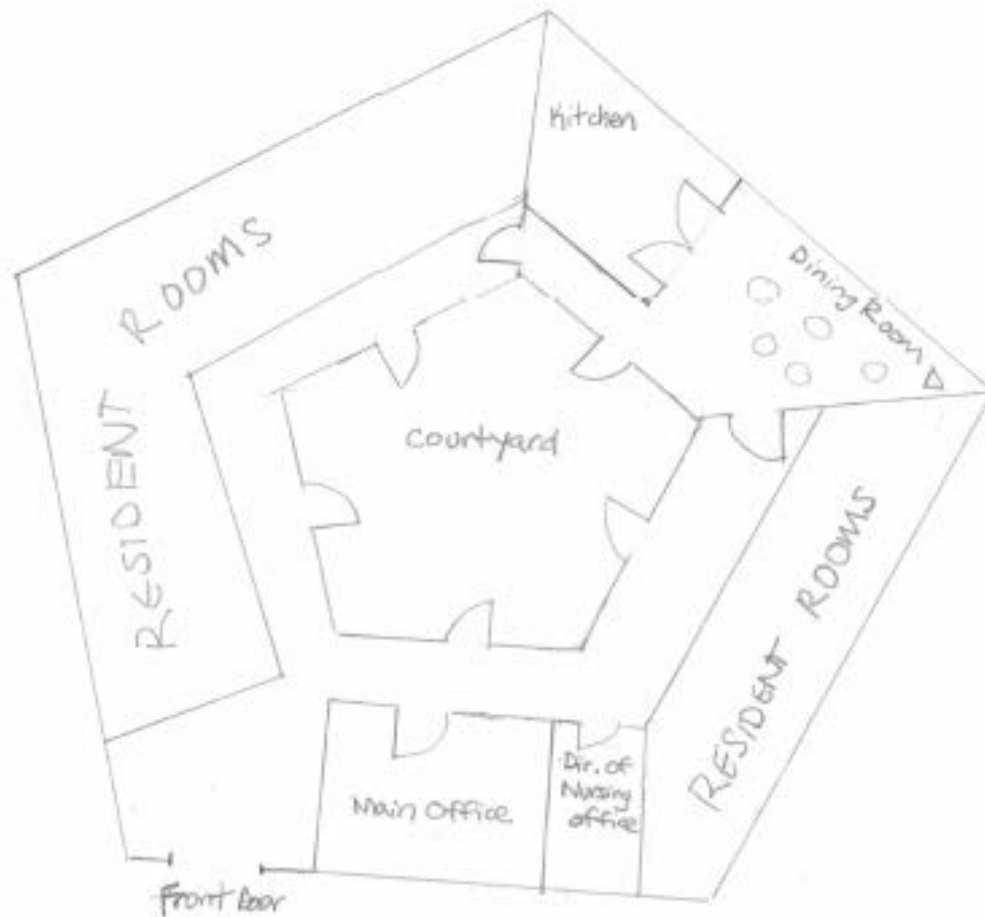
599 “Gloria” on our phones and dancing around in the breakroom. One of the staff  
600 even poured a cold Gatorade on my head right as I was receiving the call to  
601 evaluate the patient. The patient’s name was Stillman. I rushed out of the  
602 breakroom to evaluate the patient. He was unconscious when he arrived and  
603 he had no pulse. The Gatorade was dripping down my face while I tried to  
604 observe him. The respiratory therapist standing by grabbed the defibrillator,  
605 assessed him and shocked him. Rhythm stabilized and Mr. Stillman had some  
606 confusion but was mumbling something. I’m pretty sure it sounded like he was  
607 trying to say “kill the cook,” but it might have been “kiss the cook.” Then it  
608 sounded like he said “want the cup.” Moments later, his blood pressure  
609 dropped and he was started on medications, but it was not sufficient and he  
610 fell back into a state of unconsciousness. He remains unconscious to date.

611 I knew Mr. Stillman because he was my patient at my private practice.  
612 Mr. Stillman had a tendency to become easily agitated or excited, and when he  
613 became agitated, his blood pressure would skyrocket. Research has shown that  
614 in the hour after an angry outburst or excitement, even a person with normal  
615 blood pressure has a slightly higher risk of having chest pain (angina), a heart  
616 attack, a stroke, or a risky heart rhythm. This is because anger causes an  
617 outpouring of stress hormones like adrenaline, which makes a patient’s heart  
618 beat faster and blood pressure rise. Takutsubo syndrome is a form of sudden  
619 heart failure that can be caused by severe stress. It is my opinion that Mr.  
620 Stillman suffered from this syndrome, which caused a heart attack. You asked  
621 me if I think it was from the stress of the Blues winning the cup or from his

622 conversation with the cook? I cannot say either way. I can just say that

623 something made him either angry, agitated or excited that led to a heart attack.

# DIAGRAM OF OGER



O = Table/chairs

U = Door

Δ = Plant

**EXHIBIT 1**

Oak Gardens Earth Residence agrees to purchase “Poochie,” a Maltipoo puppy, born March 3, 2019, for \$1.00 from Aubrey Mills.

Seller Signature:

*Aubrey Mills*

Buyer Signature:

*Aubrey Mills*



**Job Description**  
**Cook**  
**Oak Gardens Earth Residence**

Oak Gardens Earth Residence is dedicated to the provision of quality health care and living accommodations for its residents. We believe that the foundation of Long Term Care is to serve our clients through a progressive nursing approach in a home-like setting, with the emphasis on individualized care.

**JOB RESPONSIBILITIES**

General responsibilities include but are not limited to:

- follow menus and recipes set by Kitchen Manager
- prepare all meals for residents
- maintain kitchen cleanliness
- read and follow diets and textures
- fill in for Kitchen Manager when he/she is not at work
- follow state guidelines and report any issues to Kitchen Manager or other supervisor
- monitor and maintain temperature control, portion control

**QUALIFICATIONS**

1-2 years prior experience in food service.

Job Type: Full-time, hourly pay, \$10 per hour.

Hours: 12:15-6:00 p.m., Every day but Monday, Tuesdays start at 6:00 p.m. and finish at 6:00 p.m. 30 minutes for lunch.

Experience:

- Dietary Cook: 1 year (Preferred)
- Cooking: 1 year (Preferred)

**Job Description**  
**Kitchen Manager**  
**Oak Gardens Earth Residence**

Oak Gardens Earth Residence is dedicated to the provision of quality health care and living accommodations for its residents. We believe that the foundation of Long Term Care is to serve our clients through a progressive nursing approach in a home-like setting, with the emphasis on individualized care.

**JOB RESPONSIBILITIES**

General responsibilities include but are not limited to:

- establish menus and recipes
- prepare all meals for residents when cook is not there
- maintain kitchen cleanliness and manage kitchen
- read and follow diets and textures
- place orders for food and ingredient deliveries as needed
- follow state guidelines and report any issues to Director of Nursing
- monitor and maintain temperature control, portion control

**QUALIFICATIONS**

1-2 years prior experience in food service.

Job Type: Full-Time, salary

Hours: 6:00 a.m to 12:15, Every Day but Tuesday, Mondays work until 6:15 p.m., 30 minutes for lunch.

Experience:

- Dietary Cook: 1 year (Preferred)
- Cooking: 1 year (Preferred)
- Associate's Degree or some post-high school business education (Preferred)



**EXHIBIT 5**



**EXHIBIT 6**



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# Rules of Department of Health and Senior Services

## Division 30—Division of Regulation and Licensure Chapter 87—Sanitation Requirements for Long-Term Care Facilities

Title	Page
19 CSR 30-87.010 Definitions .....	3
19 CSR 30-87.020 General Sanitation Requirements for New and Existing Long-Term Care Facilities .....	3
19 CSR 30-87.030 Sanitation Requirements for Food Service.....	6



# New Generations

Spring 2013

*Providing guidance for long-term living providers  
Published quarterly by the Section for Long-Term Care Regulation  
<http://health.mo.gov/seniors/nursinghomes/providerinfo.php>*

## **Formerly the LTC Bulletin**

### **VOLUME 11 ISSUE 2**

#### **PETS SPECIAL FEATURE**

<b>PAGE 2</b>	<b>PUPPIES FOR PAROLE</b>
<b>PAGE 4</b>	<b>ON THE ROAD...TO CULTURE CHANGE</b>
<b>PAGE 8</b>	<b>REFERENCES AND RESOURCES</b>
<b>PAGE 9</b>	<b>REGULATIONS</b>
<b>PAGE 10</b>	<b>PETS BENEFIT AGING ADULTS' HEALTH</b>
<b>PAGE 12</b>	<b>OUTDOOR BIRD WATCHING</b>
	<b>ALSO IN THIS ISSUE:</b>
<b>PAGE 13</b>	<b>CULTURE CHANGE ANNUAL CONFERENCES</b>
<b>PAGE 14</b>	<b>RESIDENT SPOTLIGHT</b>

## **Benefits of Pets in your Home**

A wealth of information exists about the health and psychological benefits pets may bring to your residents.

Pets may help relieve residents' loneliness, boredom and symptoms of depression.

Your home may be considering allowing residents to have their own pets, adopting a community pet, having "visiting pet" activity days or all three. If so, this special feature of *New Generations* is for you.

*Cover photo courtesy of Parc Provence in St. Louis*

To: [fpelligrini@olivegardens.com](mailto:fpelligrini@olivegardens.com)  
From: [amills@olivegardens.com](mailto:amills@olivegardens.com)  
05/01/2014 5:34 pm

Hey there! I just wanted to bring to your attention that Roberta is saying that some of our docs are committing Medicare fraud by billing for services not rendered. Time for her to go bye-bye.

Let me know if you want me to take care of this first thing in the a.m.

Aubrey





**IN THE CIRCUIT COURT OF SAINT LOUIS CITY  
STATE OF MISSOURI**

CHRIS WHISTLER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 2019SMMT
	)	
OAK GARDENS EARTH RESIDENCE,	)	
	)	
Defendant.	)	

**PLAINTIFF'S MOTION TO STRIKE OR AMEND**  
**JURY INSTRUCTION NUMBER 2(A)**

Plaintiff Chris Whistler requests an order from this Court striking Jury Instruction Number 2(a) because the instruction is not applicable to the instant case. Plaintiff was a cook and not a manager or supervisor. Thus, no jury will ever conclude that Defendant is entitled to the affirmative defense contained in Jury Instruction Number 2(a). The Missouri Whistleblower Protection Act (MWPA) does not define who is a supervisor or manager, but it is clear that supervisors and managers must have the authority to hire and fire other employees. Plaintiff did not have that authority.

WHEREFORE Plaintiff requests that Jury Instruction Number 2(a) be stricken.

CALL ME FIRST LAW FIRM

By: *Call Me First*

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CallMe@CallMeFirst.com  
*Attorney for Plaintiff*

**285.575. Citation of law — definitions — at-will employment doctrine codified — protected persons, prohibited discharge — action for damages, when, remedies.** — 1. This section shall be known and may be cited as the “Whistleblower’s Protection Act”.

2. As used in this section, the following terms shall mean:

(1) **“Because”** or **“because of”**, as it relates to the adverse decision or action, the person’s status as a protected person was the motivating factor;

(2) **“Employer”**, an entity that has six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. “Employer” shall not include the state of Missouri or its agencies, instrumentalities, or political subdivisions, including but not limited to any public institution of higher education, a corporation wholly owned by the state of Missouri, an individual employed by an employer, or corporations and associations owned or operated by religious or sectarian organizations;

(3) **“Proper authorities”**, a governmental or law enforcement agency, an officer of an employee’s employer, the employee’s supervisor employed by the employer, or the employee’s human resources representative employed by the employer;

(4) **“Protected person”**, an employee of an employer who has reported to the proper authorities an unlawful act of his or her employer; an employee of an employer who reports to his or her employer serious misconduct of the employer that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated under statute; or an employee of an employer who has refused to carry out a directive issued by his or her employer that if completed would be a violation of the law. An employee of an employer is not a protected person if:

(a) The employee is a supervisory, managerial, or executive employee or an officer of his or her employer and the unlawful act or serious misconduct reported concerns matters upon which the employee is employed to report or provide professional opinion; or

(b) The proper authority or person to whom the employee makes his or her report is the person whom the employee claims to have committed the unlawful act or violation of a clear mandate of public policy;

(5) **“The motivating factor”**, the employee’s protected classification actually played a role in the adverse decision or action and had a determinative influence on the adverse decision or action.

3. This section is intended to codify the existing common law exceptions to the at-will employment doctrine and to limit their future expansion by the courts. This section, in addition to [chapter 213](#) and [chapter 287](#), shall provide the exclusive remedy for any and all claims of unlawful employment practices.

4. It shall be an unlawful employment practice for an employer to discharge an individual defined as a protected person in this section because of that person’s status as a protected person.

5. A protected person aggrieved by a violation of this section shall have a private right of action for actual damages for violations of this section but not for punitive damages. However, if a private right of action for damages exists under another statutory or regulatory scheme, whether under state or federal law, no private right of action shall exist under this statute.

6. Any party to any action initiated under this section may demand a trial by jury.

7. A protected person aggrieved by a violation of this section shall have a private right of action that may be filed in a court of competent jurisdiction. The only remedies available in such an action shall be:

(1) Back pay;

(2) Reimbursement of medical bills directly related to a violation of this section; and

(3) Additionally, if a protected person proves, by clear and convincing evidence, that the conduct of the employer was outrageous because of the employer's evil motive or reckless indifference to the rights of others, then, such person may receive double the amount awarded under subdivisions (1) and (2) of this subsection, as liquidated damages. In applying this subdivision, the provisions of section [510.263](#) shall be applied as though liquidated damages were punitive damages and as though the amounts referenced in subdivisions (1) and (2) of this subsection were compensatory damages.

8. The court, in addition to the damages set forth in subsection 7 of this section, may award the prevailing party court costs and reasonable attorney fees; except that a prevailing respondent may be awarded reasonable attorney fees only upon a showing that the case was without foundation.

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(L. 2017 S.B. 43)

# Excerpts taken from:

Supreme Court of Missouri, Division No. 2.

STATE

v.

HEMENOVER.

May 16, 1905.

GANTT, J.

This is a prosecution by information, filed by the assistant prosecuting attorney of the St. Louis court of criminal correction, charging the defendant, as manager of the Banner Rubber Company, with having on the 19th of January, 1904, in the city of St. Louis, willfully and unlawfully suffered to be emitted and discharged from the smokestack or chimney of a certain building belonging to said Banner Rubber Company, and situated at the corner of Bittner and Kendrick streets in said city and within the corporate limits of said city, dense smoke into the open air, in violation of "An act to prohibit the discharge into the open air of dense smoke," approved March 21, 1901 (Laws 1901, p. 73).

The defendant contends that, as he was charged as a manager of said corporation, there was no proof that he bore that relation to the said company, and therefore he was entitled to acquittal. Asked what connection Mr. Hemenover had with that company, he stated that no one had the exclusive charge of the place; that Mr. Hemenover had charge of some of the departments. He was asked what was the character of the work he did there, and answered: "Well, I help do a good many things. I do some of the buying, and others do some of it, and I look after the manufacturing department." "Q. What supervision, if any, do you exercise over the engine room? A. About the same as I do over the other departments." On cross-examination he was asked: "You are the president of the factory, are you not? A. A corporation has no such office. Q. Aren't you known as the president? A. By courtesy; yes, sir. Q. You knew the firemen were green? A. Well, only from my observation. I had observed their work." Considering, then, the evidence before us, was there or not sufficient evidence to justify the finding of the court that the defendant was a manager of said corporation within the meaning and spirit of the act? According to the defendant's own evidence, he was the secretary, purchasing agent, and had charge of the manufacturing department of that company. The further evidence shows that he exercised supervision over the engine room in which the dense smoke was generated. The evidence further shows that he was regarded by the other employees and officers of the company as a de facto president. The term "manager" is defined in 19 Am. & Eng. Enc. of Law, 707, as "a person appointed or elected to manage the affairs of another. The term is applied to those officers of a corporation who are authorized to manage its affairs." The

effort of the defendant in this case was to show that he was not the exclusive manager of the said plant, but it does not follow that, because other officers also manage said plant, the defendant, who was a director and secretary of the company, and who, according to his own evidence, had charge of the manufacturing and control of other departments except the office room, was not thereby a manager within the meaning of the act. If so, then all that the company would have to do to escape responsibility for the violation of this act would be to decline to name any one person as manager, and then all the directors and officers would be exempt, though they jointly manage the plant. We think there was evidence from which the court was justified in finding that the defendant was the principal manager, at least of this establishment, and that he acted as such.

The question, therefore, is whether a person who is thus manager *de son tort*—manager in his own wrong—whether he can protect himself from the liability cast upon a manager under section 27 by saying, ‘I am not manager *de jure*.’ I think he cannot. Our conclusion is that the demurrer to the evidence was properly overruled, and that the conviction must stand, and it is accordingly so ordered.

BURGESS, P. J., absent. FOX, J., concurs.

# Excerpts taken from:

Missouri Court of Appeals,

Western District.

CENTRAL COUNTY EMERGENCY 911, Appellant,

v.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 2665, Respondent.

No. WD 54519.

April 28, 1998.

[ULRICH](#), Chief Judge, Presiding Judge.

Central County Emergency 911 ("Central"), a fire and emergency dispatching center, appeals the decision of the circuit court affirming the decision of the State Board of Mediation ("Board") finding that shift supervisors were not "supervisory employees" and affiliated with management and, therefore, were appropriately included in the International Association of Fire Fighters, Local 2655 ("IAFF") bargaining unit with the dispatchers. The decision of the State Board of Mediation is affirmed.

## **II. THE SHIFT SUPERVISORS ARE NOT SUPERVISORY EMPLOYEES**

As its second point on appeal, Central argues that the Board's conclusion that shift supervisors are not supervisory employees is unsupported by competent and substantial evidence. Supervisors are generally defined as those employees who formulate, determine or effectuate policies on behalf of their employer. [Baer v. Civilian Personnel Div.](#), 747 S.W.2d 159, 163 (Mo.App.1988). To determine the supervisory status of employees, the Board has set forth seven factors:

(1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees; (2) the authority to direct and assign the work force; (3) the number of employees supervised and the number of other persons exercising greater, similar, or lesser authority with respect to the same employees; (4) the level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees; (5) whether the supervisor is primarily supervising an activity or is primarily supervising employees; (6) whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; (7) the amount of independent judgment and discretion exercised in the supervision of employees. *Id.*

Central first argues that the Board was bound by the statutory definition of supervisors contained in the National Labor Relations Act. The N.L.R.B. test for determining supervisory status is



set forth at [Title 29, section 152\(11\) of the United States Code](#). 29 U.S.C. § 152(11) (1994). Section 152(11) defines a **supervisor** as one:

having authority in the interest of the employer, to hire, transfer suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

*Id.*

The decision of the State Board of Mediation is affirmed.

All concur.

## NATIONAL LABOR RELATIONS ACT

Also cited NLRA or the Act; 29 U.S.C. §§ 151-169

[Title 29, Chapter 7, Subchapter II, United States Code]

### DEFINITIONS

Sec. 2. [§152.] When used in this Act [subchapter]--

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11 of the United States Code [under title 11], or receivers.

. . .

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

**IN THE CIRCUIT COURT OF SAINT LOUIS CITY  
STATE OF MISSOURI**

CHRIS WHISTLER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 2019SMMT
	)	
OAK GARDENS EARTH RESIDENCE,	)	
	)	
Defendant.	)	

**DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF  
FRANCIS/FRANCES PELLEGRINI REGARDING PRIOR ALLEGATIONS OF  
WRONGFUL DISCHARGE AGAINST AUBREY MILLS**

Defendant Oak Gardens Earth Residence seeks an order, in limine, to exclude evidence of other, prior complaints by employees of wrongful discharge against Aubrey Mills or her prior employers for engaging in whistleblowing. The testimony of Mr./Ms. Pellegrini does not establish a sufficient similarity in circumstances to be probative of Aubrey Mills' motivation for discharging Plaintiff in this case.

WHEREFORE, Defendant requests an order from this Court excluding testimony relating to prior complaints of wrongful discharge involving Aubrey Mills.

HELP IS ON THE WAY LAW FIRM

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Excerpts taken from:

United States Court of Appeals, Eighth Circuit.

Michael E. McPHEETERS, Appellant, v. BLACK & VEATCH CORPORATION,  
Appellee.

No. 04-2268.

Decided: November 04, 2005

Before WOLLMAN, HANSEN, and BENTON, Circuit Judges. Gene P. Graham, Jr., argued, Independence, MO (Deborah J. Blakely, on the brief), for appellant. Thomas R. Buchanan, argued, Kansas City, MO (Linda C. McFee, on the brief), for appellee.

Michael E. McPheeters filed this lawsuit against his former employer, Black & Veatch Corporation, alleging age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621-634 (2000), and the Missouri Human Rights Act, Mo. Rev. Stats. § 213.010-.137 (2000). Mr. McPheeters now appeals the judgment entered by the district court<sup>1</sup> following a jury verdict in favor of Black & Veatch. After carefully reviewing the record, we affirm.

I.

Mr. McPheeters presented evidence at trial that he was fired after working 28 years for Black & Veatch Corporation, an engineering/construction firm in Kansas City, Missouri, that specializes in large, coal-fired power plants and municipal water and wastewater plants. In 1988, he was promoted to Director of Photography, a division within the Corporate Communications Department. In the 1990s, he supervised a staff of two other photographers until the two staffers were fired in 1996 in an effort to cut company costs. Mr. McPheeters worked long hours and traveled all around the world to complete his photographic assignments. By all accounts, his photography work was outstanding. Nevertheless, Black & Veatch terminated his employment in 2001, when Mr. McPheeters was 54 years old, after several cost-benefit studies recommended outsourcing the photography work.

Mr. McPheeters attempted to prove that he was fired on the basis of age discrimination. He presented evidence that in August 2000, William Cole, Vice President of Corporate Development, allegedly instructed Laura Luckert, Director of Creative Resources in the Corporate Communications Department and Mr. McPheeters' supervisor at the time, to try to eliminate the "gray hairs" in her department. Specifically, Luckert testified that Cole told her, "You've got a lot of gray hairs in your department, and I think we could save some money in that area. I'd like you to do a cost-analysis on those folks." (Trial Tr. at 329.) She said she was offended by the comment, and when she asked what he meant by "gray hairs," Cole named Bruce Erickson, a videographer, as an

example. “He's been there a long time. He's older. He's at the top of his pay scale. I think we could get what he does for us cheaper.” (Trial Tr. at 335.) Luckert said that Cole told her to check into outsourcing the work and also asked her to work on drawing up a freelance photography contract to “see if we can get Mike McPheeters off the payroll.” (Trial Tr. at 337.) Luckert testified that she was shocked and offended by the alleged “gray hairs” comment and said that she immediately determined to leave Black & Veatch. Luckert voluntarily ended her employment with Black & Veatch on November 2, 2000.

[omitted factual background]

Following the trial, the jury entered a verdict in favor of Black and Veatch. On appeal, Mr. McPheeters challenges several rulings made by the district court both before and during trial.

## II.

### A. Pretrial Rulings.

Prior to trial, Mr. McPheeters' attorney sought a ruling on the admissibility of . . . every complaint of age discrimination brought against Black & Veatch from 1998 through the present, and Plaintiff's Exhibit 4, an Excel spreadsheet created by Retzke, listing all complaints of discrimination against the company from 1999 through 2002. Mr. McPheeters argues that the district court erred by excluding this evidence, but the district court did not order a blanket exclusion of this evidence.

We . . . find no abuse of discretion in the district court's pretrial ruling concerning the Excel spreadsheet and Interrogatory No. 7, which listed other complaints of discrimination in the workplace. Consistent with our opinion in *Callanan v. Runyun*, 75 F.3d 1293, 1297-98 (8th Cir.1996), the district court cautiously refused to order a blanket exclusion of this evidence. The court concluded that on the pretrial record, these documents were overly broad and not specifically relevant to Mr. McPheeters' claim of discrimination. While background evidence of an employer's discriminatory policies or practices “may be critical for the jury's assessment of whether a given employer was more likely than not to have acted from an unlawful motive,” *Estes v. Dick Smith Ford, Inc.*, 856 F.2d 1097, 1103 (8th Cir.1988), overruled in part on other grounds by *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), as recognized in *Foster v. Univ. of Ark.*, 938 F.2d 111, 115-16 (8th Cir.1991), the evidence must nevertheless “assist in the development of a reasonable inference of discrimination within the context of each case's respective facts,” *Callanan*, 75 F.3d at 1298 (internal quotations omitted). The district court specifically left open the possibility that the plaintiff at some point in the trial could make a more specific record showing the relevance of these other complaints of discrimination, but indicated that such a record did not yet exist at the pretrial stage.

We see no abuse of discretion. The evidence of other complaints as listed in these documents did not reveal that any particular discriminatory policy or practice was prevalent at Black & Veatch. No witnesses were prepared to testify to any specific factual allegations of other discrimination. Additionally, neither the spreadsheet nor the interrogatory answer indicated what decisionmakers or departments were involved in those complaints, and thus, the other complaints were not shown to bear a connection to the employees allegedly involved in discriminating against Mr. McPheeters. See *id.* We cannot say that the district court abused its discretion as it “was in a unique position to adjudge the relevance and probative value of the testimony.” *Id.* The plaintiff made no further offer of proof regarding this evidence or any of the specific claims listed.

Accordingly, we affirm the judgment of the district court.

HANSEN, Circuit Judge.

Excerpts taken from:

Missouri Court of Appeals, Western District.

G. Steven COX, Appellant, v. KANSAS CITY CHIEFS FOOTBALL CLUB, INC., Respondent.

No. WD 76616.

Decided: August 05, 2014

Before Division Four: ALOK AHUJA, Chief Judge, Presiding, CYNTHIA L. MARTIN, Judge and WAYNE P. STROTHMANN, Special Judge. Chad C. Beaver and Lewis M. Galloway, Kansas City, MO, for appellant. Anthony J. Romano, Alison P. Lungstrum and Eric E. Packel, Kansas City, MO, for respondent.

G. Steven Cox ("Cox") appeals a judgment in favor of the Kansas City Chiefs Football Club ("Chiefs") entered following a jury verdict in an age discrimination suit. Cox claims the trial court abused its discretion in the exclusion of certain evidence at trial, and committed plain error in failing to intervene during the Chiefs' closing argument. Finding no error, we affirm the trial court's judgment.

Cox was hired in 1998 by the Chiefs as a maintenance manager.

[facts omitted]

Cox was terminated . . . on October 14, 2010. Cox was told that he was being terminated for poor performance, and was given examples, including the unauthorized Crowley pay raise. Cox later told another Chiefs' employee, Brenda Snizek, that he had been terminated because he gave Crowley a raise in violation of Donovan's instructions. At the time of his termination, Cox was 61 years old. His position was later filled by a 37-year old.

Cox filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR"). In the Charge, Cox stated that the Chiefs told him he had been fired for performance reasons, including the Crowley pay raise. Cox alleged in his Charge a single, discrete act of age discrimination on the day of his termination. When Cox filed suit following issuance of a right to sue letter, his petition similarly alleged a single, discrete act of age discrimination on the date of his termination.

Cox's case was tried to a jury. After a 14-day trial, the jury returned a verdict in favor of the Chiefs on Cox's claim of age discrimination. Cox appeals.

Point One



In his first point on appeal, Cox claims that the trial court abused its discretion “in ordering a blanket exclusion of testimony and evidence from and about 17 or more former employees.” Cox claims that the excluded evidence was “related to [the Chiefs’] systematic elimination of older front office employees.” Cox claims the excluded evidence was “highly relevant” because “it would have demonstrated [the Chiefs’] discrimination against other front office employees on the basis of their age,” and “would have demonstrated [the Chiefs’] discriminatory motives and/or intent.” Cox thus sought to offer evidence about the termination of 17 other employees for two distinct reasons: (i) to establish a pattern and practice by the Chiefs’ on the business side of its operations of discriminating against older employees; and (ii) as circumstantial evidence permitting an inference that the stated reason for terminating Cox was pre-textual.

#### (ii) The Trial Court's Exclusion of Testimony From and About 17 Former Chiefs' Employees and Cox's Related Offers of Proof

The Chiefs sought an in limine ruling to exclude testimony from or about 17 former employees of the Chiefs<sup>2</sup> whom the Chiefs anticipated Cox would call to testify about the circumstances of their departures from employment. The Chiefs argued that these former employees were not sufficiently similarly situated to Cox's circumstances to be probative of his discrete claim of discriminatory termination, and that the evidence could not be separately offered to establish a pattern or practice of discrimination because Cox did not allege this form of discrimination in his MCHR Charge or in his petition. The Chiefs thus argued that the evidence was irrelevant and unduly prejudicial. On February 8, 2013, the trial court granted the Chiefs' in limine motion without explanation.

. . .

Generally, it is true that “ ‘evidence of other acts of [a] defendant are admissible if those acts are sufficiently connected with the wrongful acts that they may tend to show defendant's disposition, intention, or motive in the commission of the acts for which . damages are claimed.’ ” *Kline v. City of Kansas City*, 334 S.W.3d 632, 643 (Mo.App.2011) (quoting *Brockman v. Regency Fin. Corp.*, 124 S.W.3d 43, 51 (Mo.App.W.D.2004) (emphasis in original)). “In determining whether [such] evidence is admissible in a discrimination case, the trial court must ascertain whether the proffered evidence would allow ‘a rational finder of fact to infer a discriminatory motive or . [to] conclude that the employer intended to discriminate in reaching the decision at issue.’ ” *Id.* (quoting *West v. Conopco Corp.*, 974 S.W.2d 554, 556 (Mo.App.W.D.1998)).

Here, Cox hoped to have 17 former employees testify about the circumstances of each employee's departure from employment with the Chiefs for the purpose of circumstantially establishing that the Chiefs possessed a discriminatory motive or intent in terminating Cox. “There is no blanket exclusion in discrimination cases of [such “me too”] evidence. Rather, the relevancy of such evidence must be reviewed on a case-by-case basis.” *Hurst v. Kansas City, Missouri School Dist.*, No. WD76534, 2014 WL 1677822, at \* 11 (Mo.App. W.D. April 29, 2014). Though “me too” evidence cannot be summarily excluded, “me too” evidence from or about other employees is not logically

relevant to tend to prove discriminatory intent or pretext unless it is established that the circumstances of the plaintiff and the other employees are “sufficiently similar,” a relationship which the plaintiff bears the burden of establishing. *Williams v. Trans States Airlines, Inc.*, 281 S.W.3d 854, 874 (Mo.App.E.D.2009).

First, though Cox correctly observes that the admissibility of “me too” evidence must be assessed on a case-by-case basis, Cox's Brief curiously fails to address the circumstances of the 17 former employees on a case-by-case basis.

Moreover, even were we to conclude (which we do not) that the trial court abused its discretion [in refusing to admit the evidence] Cox would still be required to establish that the trial court abused its discretion in alternatively ruling that the offers of proof were not legally relevant. “Legal relevance involves a process through which the probative value of the evidence (its usefulness) is weighed against the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time or needless presentation of cumulative evidence.” *Porter v. Toys ‘R’ Us—Deleware, Inc.*, 152 S.W.3d 310, 318 (Mo.App.W.D.2004) (citations omitted). A trial court must weigh the probative value of evidence against any possible prejudice which might occur due to its admission because “[l]ogically relevant evidence is not necessarily admissible; the evidence must also be legally relevant.” *Id.* Here, the trial court held that “any probative value of the testimony proposed by the plaintiff from these witnesses would be outweighed by the prejudicial effect it would have upon the jury . I believe the testimony of these other past employees would only serve to confuse and distract the jury.”<sup>19</sup> Point one is denied.<sup>20</sup>

The trial court's judgment is affirmed.

CYNTHIA L. MARTIN, Judge.

All concur.