

FILED

No. 30514-7-III

APR 18 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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JAY P. MEHRING, a single person,  
Respondent/Cross-Appellant,

v.

CITY OF SPOKANE, a municipal corporation in and for the State  
of Washington; and ANNE E. KIRKPATRICK, a single person,  
Appellants/Cross-Respondents.

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**RESPONDENT MEHRING'S RESPONSE/CROSS-APPEAL  
BRIEF**

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## I. INTRODUCTION

*“At trial they used lances to tilt with the windmills and on appeal it is too late to avail themselves of the proper weapons and a different target.”<sup>1</sup>*

This matter was filed in December 2009 as a 42 U.S.C. § 1983 case involving the deprivation of constitutionally-protected rights, wrongful withholding of wages, and infliction of emotional distress against Jay P. Mehring, a decorated, federally-commissioned undercover Spokane Police Officer. After filing his original Complaint, Appellants then began retaliating against Mehring in the workplace.

At the conclusion of a 3-week jury trial, Superior Court Judge Kathleen O’Connor granted Plaintiff Mehring’s Motion for Judgment as a Matter of Law, finding Appellant Defendant City of Spokane (“City”) had committed a per se violation of Plaintiff Mehring’s constitutional right to procedural due process when it terminated his employment in violation of its own Felony Layoff Policy<sup>2</sup>. Judge O’Connor ruled this conduct

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<sup>1</sup> Cowley v. Braden Industries, Inc., 613 F.2d 751 (9th Cir., 1980). The burden of persuasion should not be altered to compensate for the deficiencies of an appellants’ trial strategy. After spending 23 months including three weeks of trial unsuccessfully using character assassination in an attempt to persuade the Trial Court and later a jury that Plaintiff Mehring was not unjustly deprived of his constitutional right to due process, Appellants have now changed targets blaming judicial error and an impassioned jury for the results of this case.

<sup>2</sup> ADMIN POLICY 0620-06-34 – Layoff of Employees Charged With A Felony (“Felony Layoff Policy”) Ex. 8 – **Appendix A**; RP 1890, 1894.

violated City policy which set the floor for constitutionally required pre-deprivation procedural due process owed to City employees.

In turn, the jury then unanimously found, on a verdict form proposed by Appellants, (1) Defendants/Appellants City and its then Chief of Police Anne Kirkpatrick (“Kirkpatrick”) had further violated Mehring’s constitutional post-deprivation procedural due process rights; (2) Defendant Kirkpatrick had committed intentional and/or reckless infliction of emotional distress/outrage; (3) Appellants had unlawfully retaliated against Mehring when he sought redress for Appellants’ due process violations; and (4) Appellant City had committed intentional and/or reckless infliction of emotional distress/outrage. The verdict for Mehring was \$722,676, of which \$250,000 was for punitive damages against Kirkpatrick, personally.

The jury verdict was clearly supported by substantial evidence and applicable law. Mehring’s Cross-Appeal thus pertains solely to the Trial Court’s reversible error in: (1) dismissing Mehring’s wrongful withholding of wages cause of action; (2) refusing to name Kirkpatrick as a judgment debtor on the Judgment Summary; and (3) application of an incorrect interest rate.

## II. ASSIGNMENTS OF ERROR

1. The Trial Court erred in dismissing sua sponte<sup>3</sup> Mehring's Wrongful Withholding of Wages Claim. (RCW 49.52.050).
2. The Court erred post-trial in refusing to name Kirkpatrick personally as a judgment debtor.
3. The Court erred post-trial in applying an incorrect interest rate to the damages awarded against Kirkpatrick. (RCW 4.56.110(3)(b)).

## III. ISSUES

1. Whether the Trial Court erred in dismissing sua sponte Mehring's Wrongful Withholding of Wages Claim in violation of RCW 49.52.050.
2. Whether the Trial Court erred post-trial in refusing to name Kirkpatrick as a judgment debtor after the jury unanimously levied a \$250,000 punitive damages award against her personally.
3. Whether the Trial Court erred post-trial in applying an incorrect interest rate to the damages awarded against Kirkpatrick in violation of RCW 4.56.110(3)(b).

## IV. STATEMENT OF THE CASE

### A. Defendant Kirkpatrick – Lawyer And Aspiring Big City Police Chief.

This case involves Anne Kirkpatrick, a licensed lawyer as well as aspiring big city police chief (RP 646-8, 674-5), who in August 2006 was hired by Appellant City as Spokane's new Chief of Police. RP 1334-5. Previously, Kirkpatrick headed two small town Washington police

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<sup>3</sup> RP 1894-96.

departments – Ellensburg, then Federal Way. Id. At the time she arrived in Spokane, Jay P. Mehring, a married father of 2 young sons was serving in the highly dangerous position of an undercover narcotics officer for the Spokane Regional Drug Task Force (“Task Force”). RP 953-4, 971, 981. His rank was Detective. Id. Detective Mehring was an upstanding, decorated, and federally commissioned officer of the Spokane Police Department (“SPD”) for over 13 years. RP 959, 976; Exs. 105-7, 109-10, 114-6.

As the new SPD Chief, Kirkpatrick demanded her officers comply with her “*Five inviolable cardinal rules.*” RP 719. “*No bullying or discrimination; You lie, you die; No abuse of authority; No insubordination; and No conduct unbecoming that would lead to lack of public trust in the agency.*” RP 722. Kirkpatrick made certain her officers understood the full meaning behind her policy, “*You lie, you die*” – if they were to have memory issues and/or losses regarding key circumstances or events, they would be subjected to a fitness for duty examination. RP 1219-20. Phrasing that would trigger such scrutiny included “*I don’t recall, I don’t know.*” Id. Kirkpatrick’s tenure in Spokane was never to be permanent (RP 655,1334); she never purchased a home in Spokane; she continued her permanent residence in Seattle; and she actively applied to

and interviewed for Police Chief positions in San Francisco and Seattle. RP 655-6, 1435.

From the onset of her tenure, Kirkpatrick ensured all officers knew her position that she had sole authority to set the standard on discipline. RP 682, 703-5, 1336-7, 1456-8. Whether an employee was to be placed on unpaid layoff status was her choice – *“different chiefs do it differently. It is my choice.... I have the authority to set that standard and I have set that standard.”* RP 682, 703-5, 1336-7, 1456-8. She emphasized *“spankings”* were to be given quickly; that she was not a *“barker but... a biter;”* and likened her lapel insignia (command stars) to those of a ninja – *“you have stars for a reason – know when to throw them.”* RP 1466-7; Ex. 39.

Mehring’s first in-service training conducted by Kirkpatrick left him with the distinct impression her focus was centered upon her and not crime. RP 984-985. She discussed her history, background, law degree, management style, cardinal rules, and the individuals she’d previously fired, all of which seemed to underscore how heavy handed she was going to be with a desire to make an “example” out of someone. RP 984-5.

**B. Lisa Mehring’s Divorce Strategy.**

In November 2006, Lisa Mehring (“Lisa”) filed for divorce from Jay Mehring. RP 990. Until Saturday 3/24/07, their divorce was

proceeding strained but amicably. RP 991. On that date, the Mehrings attended a wrestling tournament involving their sons. RP 992-5. They had arrived separately. RP 992-5. Initially, the couple sat together and “*got along fine*” but eventually began arguing over finances, but with no threats by either. RP 992-5. When the tournament ended, Lisa left in her vehicle with their boys. Id. The couple soon continued arguing over the phone. RP 996. Mehring admits he said things he shouldn’t have during the call. Id. “*For the first time, I threatened to fight her for custody of the boys. I threatened to burn her down in the divorce and to destroy her.*” Id. These words were used in the context of the couple’s finances and divorce. Id. He never threatened to kill his wife or burn the house down with her in it. RP 997.

On Monday 3/26/07, Mehring was ordered to a meeting with his SPD superiors. RP 997-8. Upon arrival at work, he was advised SPD was “*looking into allegations of domestic abuse....*” RP 999. The hearsay allegations were provided by two fellow male officers who were close friends of Lisa’s. RP 1002-4. Mehring’s supervisors provided Mehring a written directive removing him from the Drug Task Force and placed him on desk duty in another unit. RP 1000-2; Ex. 9. Mehring became concerned that Lisa was utilizing SPD’s internal complaint process in response to his threat to seek custody of their sons. Id. Mehring advised

his superiors the allegations were “*all divorce bullshit*” and wanted to “*make sure that [he'd] be going back to the Task Force*” when everything resolved. RP 1001. He was assured he would. RP 1001; 1178. Mehring was “*mistakenly confident that [the SPD] would see [the allegation] for what it was. ...a move on the divorce chessboard. ...by Lisa.*” RP 1001-2.

On Wednesday 3/28/07, Lisa executed a Declaration in support of a Motion for a Restraining Order. Ex. 503. Mehring testified Lisa “*did not prepare this document. She was persuaded into signing it by the detectives that showed up, and mainly by her divorce attorney.*” RP 1156; Ex. 503. Mehring was then served with a restraining order and “*realized that this was going to be a big deal and it was a great concern.*” RP 1017-8.

**C. Mehring The “Example” Felony Arrest And Layoff.**

On Friday 3/30/07, Mehring was escorted into Defendant Kirkpatrick’s private conference room. RP 1019. Once in the room, Kirkpatrick slid a “Felony Layoff Letter” across to Mehring saying, “*I do intend to terminate you.*” RP 1020, 735; Ex. 10. The letter was a written order separating Mehring from the SPD, summarily and indefinitely depriving him of his pay, benefits, police authority, and privileges; and then felony harassment charges were filed against him. RP 1039-40;

Ex. 10. Mehring was thereafter immediately arrested, handcuffed, and booked into jail<sup>4</sup>. RP 1021.

Although Appellants' "Felony Layoff Letter" referenced Civil Service Rule IX<sup>5</sup>, it stated in "*this instance normal lay off and reinstatement procedures will not apply....*" Ex. 10. Appellants' HR Office was responsible for advising employees of actions available to them, such as the ability to appeal a layoff. RP 1538. Appellant's Acting HR Director erroneously claimed Civil Service Rule IX provided for no appeal process. RP 1525, 1539. In fact, neither Kirkpatrick nor the City ever advised Mehring there was a specific policy entitled "Layoff of Employees Charged with a Felony<sup>6</sup>," with mandatory provisions for notice, ad hoc committee review, and an opportunity to be heard prior to job deprivation. RP 1033-4; Ex. 8.

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<sup>4</sup> Mehring was arrested by the Spokane County Sheriff's Department, because the purported crime occurred in Spokane County. RP 1647-8.

<sup>5</sup> See **Appendix B** hereto, Civil Service Rule IX, pp. 33-7 of Ex. 6.

<sup>6</sup> "When it comes to the City's attention that an employee has been formally charged with a felony... the **Human Resources Department shall convene an ad hoc committee** composed of the employee's department head or designee, one person from the Human Resources Department, and (if the employee is in a bargaining unit) one person from the bargaining unit. **The ad hoc committee shall review the charge** and determine whether it would be a violation of this policy to retain the employee in the job pending court trial determination.... **The employee, ...may make a presentation at the meeting of the ad hoc committee if the employee desires.** The committee shall reduce its recommendation in writing and submit them to the Human Resources director, the Deputy Mayor and the affected employee... **the Deputy Mayor... will make the decision as to whether to lay the employee off pending court trial determination.**" (Emphasis added); excerpt from **Appendix A** attached hereto; Ex. 8.

The City's "Felony Layoff Policy" (FLP) had been long standing (effective 11/28/92) and had even been revised on 4/25/06, less than 5 months before Kirkpatrick arrived in Spokane. RP 496. At trial, Kirkpatrick testified she was unaware of the FLP, rationalizing that she expected Appellants' HR would have been knowledgeable about the FLP. RP 1449. Appellants' acting HR Director likewise stated she was unaware of the FLP. RP 1525, 1530. If the FLP's required ad hoc committee had been convened as required, the Police Guild President would have been a part of it. RP 457, 500-5; Ex. 8. Yet, not one provision of the FLP was followed. Id. The SPD Guild was not permitted to file claims regarding any civil service actions since the individual affected "*has to do that himself.*"<sup>7</sup> RP 594. Appellants' HR Director confirmed this pursuant to Article 3 of the Guild Contract. RP 1534-5; Ex. 7. The Guild was contractually unable to arbitrate on behalf of an employee laid off pursuant to Civil Service Rules, thus leaving an employee without arbitration rights and litigation as the only recourse. RP 1535-6.

Kirkpatrick inexplicably believed her right and choice was to act unilaterally, placing Mehring on unpaid layoff status. "*I have the*

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<sup>7</sup> The Guild President never testified the Union was fully satisfied that HR and Chief Kirkpatrick had complied with Civil Service Rule XI as Appellants misstate. App.s' Br., p. 11. Rather, the Guild President testified Appellants were following the Civil Service Rules according to what they wrote in the Layoff letter. RP 574.

*authority to set that standard and I have set that standard.”* RP 1456-8. Despite the express language of the FLP, Appellants’ Acting Deputy Mayor defiantly testified “*regardless of what any ad hoc committee would have said, I would have followed the recommendations of the Chief and the HR director and laid off Mehring pending resolution of the criminal case.*” RP 874.

Moments after arresting Mehring, Kirkpatrick conducted a pre-arranged public media press conference wherein she intentionally “outed” Mehring as an undercover detective. RP 735-6, 744, 746-7, 827, 1405. She then distributed his photo which previously had not even been displayed within the SPD due to safety concerns over his dangerous undercover work and status. *Id.* Kirkpatrick never advised Mehring she planned to publicly disclose his undercover status to the media. RP 743, 1027. Despite her knowing he was working with very dangerous people, Kirkpatrick never contacted Mehring’s supervisors to inquire about the nature of the assignments he was working on. RP 741-3. She never discussed with anyone her plan to disclose Mehring’s undercover status to the media. RP 754. In “outing” Mehring, Kirkpatrick gave no consideration for his safety, that of his family, or the individuals he worked with. RP 1023-4.

At the time Kirkpatrick broadcast Mehring's arrest and identity, he had been active in a case involving persons affiliated with the notorious Sinaloa Cartel, traffickers of powder cocaine. RP 1024-6. Mehring's Task Force supervisor testified that disclosing the identity of an undercover officer could be dangerous not only for the officer "*burned*," but also for the officer's family and those working with the officer. RP 894, 912-3. That night after his release from jail, Mehring witnessed Kirkpatrick "*rather proudly*" announce on television "*that they had arrested a 13-year... undercover narcotics detective with the task force, Jay Mehring, and praised her sergeants who were involved in the investigation....*" RP 1022-4.

As a result of being laid off without pay, Mehring was placed in a position "*where [he] couldn't do anything. ...[He] had lost his income....*" RP 1034. He ended up living part time in a friend's unfinished basement, part time in his parent's vacant rental in Coeur d'Alene, and part time in California with friends. RP 1034-7. He attempted to work anywhere he could get a job. Id.

Dr. Deanette Palmer, a psychologist for the SPD who had previously provided both personal and marital counseling for Mehring noticed "*Detective Mehring began to display significant depressive and*

*anxious symptomology. He was very distraught about the layoff status.”*

RP 1244, 1251-4. Dr. Palmer testified

*“...there had been a significant exacerbation of both his depressive and anxious symptomology. After the layoff in March of 2007, there was a significant exacerbation in both, including at times some suicidal ideation without intent. There was some significant anxiety and stress that manifests itself in panic attacks, in anhedonia...[which manifests as] inability to experience joy in things, in sleep disturbance, in chest pains.”*

RP 1254. Being placed on administrative leave was very demoralizing for Mehring. Having his badge and gun removed stripped him of his identity.

RP 1255-6. Being placed on leave without pay put him into financial peril resulting in the loss of his home and forcing him to move from place to place, sleeping on different couches, and not having any kind of a home base. Id. It was very disruptive to him. Id.

**D. Lisa’s Domestic Violence Retraction And The Criminal Trial.**

Within days (4/10/07), Lisa Mehring moved to dismiss her Restraining Order. RP 1028-9; Ex. 173. On 4/25/07, she filed a Domestic Violence Input Statement advising there were things not true in her probable cause affidavit and that she was neither threatened nor felt endangered by Jay. RP 1030-1; Ex. 15. Lisa stated her belief she and Mehring were both the victims of overzealous law enforcement, domestic violence laws, and the legal system, and she would not be a part of it.

RP 1227; Ex. 15. Despite her statements, Mehring's criminal charges were not dropped. RP 1030-1.

On 5/10/07, Mehring received a letter from Kirkpatrick advising she was offering him an opportunity to voluntarily give a statement or to recommend other investigative follow-up that the SPD Internal Affairs office should explore. RP 1031-2; Ex. 16. However, Kirkpatrick stressed *"any statement made by you will be purely voluntary and can be used against you in your pending criminal matter."* RP 828; Ex. 16. Neither Mehring nor Kirkpatrick considered this to be a Garrity letter. RP 828, 1032. Mehring knew anything he said about the allegations against him would be used against him in his pending domestic violence criminal trial. RP 1032. As a result, he was not given an opportunity to tell his side of the story. RP 1032-3. In June 2007, Kirkpatrick planned a Loudermill hearing for Mehring. RP 495. *"A Loudermill hearing is the final process in a disciplinary action taken against an officer. It's a hearing held by the chief where you can go in and explain your side of the story... defend yourself in any potential disciplinary action that she would be deciding."* RP 1161. Kirkpatrick never did hold a Loudermill hearing for Mehring. RP 789-90; Ex. 604 – illustrative.

In October 2008, while still on unpaid layoff status, Mehring was tried on the felony harassment charge. RP 1039-40. Lisa Mehring

testified on his behalf. RP 1039-40. Mehring was found not guilty. RP 1041. During trial, the Prosecutor was heard to exclaim “*he never wanted to prosecute this stupid case.*” RP 1106. Immediately after the verdict, Mehring told the waiting press there were serious morale problems in the SPD directly related to its administration, and every time he thought it could not get any lower, morale sunk to another level at the SPD. RP 1041.

**E. Post-Trial Reinstatement.**

Two days after his “not guilty” verdict, Mehring’s 569 day unpaid layoff ended. RP 755-6; 1042. Thereafter, he was reimbursed back pay, overtime pay (based upon an estimated five-year average), and 2nd shift pay, all in the amount of \$127,945.51. RP 1042; Ex. 35, ¶ 11. However, Mehring was not made whole, since he was not returned to in the Task Force as promised at the start of his temporary duty assignment. RP 1221. Further, Mehring was not compensated for the emotional, psychological, and physical injuries suffered during his wrongful termination. RP 1221.

**F. Appellants’ Immediate Post-Trial Retaliation.**

Ignoring the jury’s verdict, Kirkpatrick asserted Mehring was guilty despite never conducting her own investigation or questioning Mehring’s alleged accusers. RP 1458-60. Kirkpatrick would have terminated Mehring instead of reinstating him. RP 763.

In spite of the evidence and jury verdict, Kirkpatrick immediately thereafter instructed the previously suspended Internal Affairs (“IA”) investigation to be finalized “*for conduct unbecoming.*” RP 756, 1043-4; Ex. 26. Mehring was thereafter interrogated by IA and for the first time since his 3/24/07 argument with Lisa, he was able to tell his side of the story. RP 792, 1044-5. An Internal Affairs Review Panel (“ARP”) was convened to review the IA investigation. RP 757. The Panel returned a finding of “*unfounded*”. RP 757; Ex. 32. “*Unfounded*” means the investigation determined the alleged act(s) did not occur and did not involve department personnel. RP 547. Yet, Kirkpatrick intentionally changed that finding to “*insufficient evidence*” despite no further investigation or review of her own. RP 757, 759, 1410, 1458-61, 1486, 1504; Ex. 33. Then Kirkpatrick inexplicably gave notice she was absolving herself of any responsibility for Mehring’s continued employment. “[T]he City may be subject to a negligent retention lawsuit based on this record. This is the City’s determination to have Jay Mehring reinstated.” RP 760-3; Ex. 34.

Upon reinstatement, Mehring was assigned to the Targeted Crimes Unit (TCU) despite his written request to be sent back to the Drug Task Force. RP 1046-50; Exs. 9, 160. His Task Force supervisor likewise had hoped Mehring would return to the Task Force. RP 920. Yet, Appellants

contrived a newfound stance that the Task Force position was now no longer available to 'Detectives.' RP 1050-3; Ex. 40. Nonetheless, Kirkpatrick stated even if the opening was available to Mehring, she would not have approved him to go back into that unit. RP 767.

**G. Appellants' Post-Lawsuit Retaliation.**

On 12/15/09, as an exercise of his right to free speech to redress the wrongs against him, Mehring filed a lawsuit against Appellants. RP 1058. Mehring's Complaint included claims alleging violations of his constitutional rights, tortious acts against him, wrongful withholding of wages, and emotional pain and suffering. CP 9. His Complaint centered on Appellants' failure to follow their own rules and procedures and for not affording him due process. RP 1168.

On 9/3/10, Mehring provided Appellants with written responses to Interrogatories that included a listing of his injuries, symptoms, and conditions suffered as a result of Appellants' wrongful conduct. RP 1062-4, 657. Six days after receiving his answers to Interrogatories, Defendant Kirkpatrick was to be deposed. RP 1064. On her deposition day, Mehring was on duty as a plain clothes Detective in TCU. RP 1064. As a Detective, he was required to wear his duty weapon, which he was doing the morning he attended Kirkpatrick's deposition. RP 623, 1065.

Within minutes of her deposition being started, Kirkpatrick's attorney interrupted and demanded to know if Mehring was "armed." RP 1066. When it was acknowledged he was, Kirkpatrick "*stormed out of the room*" ceasing her deposition. RP 1066. Mehring said nothing during Kirkpatrick's brief deposition. RP 672-3. Yet, she later claimed she was "*frightened*" of Mehring in that "*within a four- to five-day window*" before her deposition she supposedly received information he was "*suicidal, he had paranoid thoughts, and that his hands were trembling.*" RP 625-8. The information she allegedly was referring to was Mehring's answers to Interrogatories, as well as a pre-employment interview he had given in or around 1994 – 15 years earlier! RP 662-63. Despite Kirkpatrick's purported fright that Mehring was now purportedly dangerous, suicidal, and possibly homicidal, she never spoke to his supervisors or anyone else in his direct command. RP 640-1. Despite her purportedly learning of Mehring's "*conditions*," Kirkpatrick never gave her staff any direction to investigate or instruction to get more information about the nature of his "*conditions.*" RP 691.

At trial, Kirkpatrick was unable to find any record mentioning so called trembling hands, much less anything in the 15 year old pre-employment psychological evaluation identifying Mehring as having any dangerous, homicidal, or suicidal personality traits. RP 668-9, 688-9,

822-3. Indeed, that evaluation actually stated Mehring's MMPI scores were all reported normal. RP 1480-1.

Within minutes after Kirkpatrick stormed from her 9/9/10 deposition, Mehring was directed to respond to his supervisor's office at the SPD. RP 1066-8; Ex. 60. Once there, Appellants presented Mehring with an Admin. Leave letter, confiscated his service weapon and badge, and directed him to vacate his desk. RP 1067-8; Ex. 60. Then, in concert with the City's Acting HR Director, Kirkpatrick placed Mehring on leave. RP 674. The next day Kirkpatrick emailed all SPD Captains, Lieutenants, and command staff punitively advising that "*recently the City received information in Detective Mehring's civil lawsuit regarding his mental and emotional status. ...HR determined that paid administrative leave was appropriate at this time.*" RP 842-3; Ex. 62.

The SPD Guild President was never made aware of any purported concern prior to the 9/10/10 email regarding Mehring's mental and emotional status as an employee. RP 541. Mehring's psychologist, Dr. Palmer, had seen nothing during her treatment of Mehring in 2010 giving rise to any concerns he could not do his job. RP 1259. Mehring saw his placement on administrative leave as punitive; a pretextual power play by the City related directly to Kirkpatrick's deposition theatrics. RP 1069. Because he was no longer able to carry his service weapon, Mehring

promptly applied for and was granted a concealed weapon permit. Despite her claim he was purportedly suicidal and paranoid, Kirkpatrick signed off on and authorized his concealed weapon permit! RP 1069-71.

Kirkpatrick's 9/9/10 Admin. Leave letter ordered Mehring to meet with the City's Employee Assistance Program ("EAP") and thereafter submit a return to work certificate. RP 1071; Ex. 60. One week later, 9/17/10, Appellants sent a different, more onerous letter to Mehring ordering him to "*submit to psychological counseling, testing, whatnot.*" RP 1072; Ex. 64. Mehring dutifully complied with that order on 10/27/10. RP 1072-3; 1264; Ex. 605. His doctor then wrote the equivalent of an EAP certificate advising "*...it is my opinion that there is nothing to suggest that he is not fit for duty. He is neither suicidal nor homicidal. He is fully capable of handling existing work stress. ...it is my opinion that Jay is actually a better detective now.*" RP 1264, 1500; Ex. 605. Additionally, Mehring successfully completed a psychological exam by Appellants' psychologist. RP 1072-3.

However, instead of returning him to work, Appellants issued yet another written directive ordering Mehring to attend another psychological exam in Bellevue, Washington. RP 1072-4; Ex. 74. Mehring objected, since he always understood Appellants would only subject him to one such examination. RP 1074-5, 1387. Further, Mehring understood the

new proposed doctor was a personal friend of Kirkpatrick, and Mehring believed the exam would not be fair. *Id.*; RP 1075.

**H. Appellants' Escalating Retaliation.**

On 2/23/11, while still unassigned, Mehring applied for vacation and cleared it through his chain of command. RP 1075-6; Ex. 76. The next day, unbeknownst to Mehring, Appellants' HR Director emailed Kirkpatrick and others stating

*"I'm about ready to send a letter to Mehring's lawyer... he must go to the FFD [Fitness for Duty] scheduled on March 3<sup>rd</sup> or begin using accrued leave.... Is there a reason we're not okay with him burning up his leave time...? Keeps him out longer but not on our dime, which sounds like a win-win to me. He still can't come back to work until he does the FFD. This just delays his return even longer but we don't have to pay for it."*

RP 1503-4; Ex. 179. While Mehring was on vacation, Appellants ordered him to attend the second psych exam to be conducted by Kirkpatrick's personal friend, the Bellevue doctor. RP 1076-7; Ex. 77. Mehring again immediately objected. RP 1077-8.

In response, Kirkpatrick initiated an IA Complaint against Mehring for purported insubordination "*after a determination was made that Detective Mehring did not comply with the terms of his letter of administrative leave dated 9/9/2010.*" RP 844-5, 1078; Exs. 86, 89. Ultimately, the ARP panel that reviewed the IA investigation determined

the Complaint against Mehring was “unfounded.” RP 846, 1079; Ex. 89. However, Appellants, in turn, punitively changed that finding to “*not sustained, no sanction.*” RP 1079-80; Ex. 91. “Not sustained” is defined as “*when the investigation discloses that there is insufficient evidence to sustain a complaint or fully exonerate the employee.*” RP 547. Instead of being completely vindicated, Appellants punitively claimed there was not enough evidence to fully exonerate Mehring. RP 762-3.

As a result, Mehring was ordered to contact Kirkpatrick directly for “*all requests for vacations, sick leave, compensatory time and other forms of leave....*” RP 1080; 1484-5; Ex. 91. No other Detectives within SPD had such a direct reporting requirement to Kirkpatrick, only Mehring! RP 1757. He was also ordered to be “*available by phone to respond within 60 minutes of a phone call.*” RP 1204-5. When questioned about being on Kirkpatrick’s 60-minute “leash,” Mehring responded “*you just pay very close attention to your phone and hope that you don’t miss calls.*” RP 1205.

**I. Appellants’ Abuse Of Mehring’s Psychologist/Medical Records.**

In late April 2011, Kirkpatrick began communicating with Mehring’s psychologist, Dr. Palmer, regarding continuing her SPD contract. RP 849-53; Ex. 139. Kirkpatrick wrote Dr. Palmer that issues

had arisen in regard to renewing her SPD contract due to a “*recent event in court...*,” referring to Mehring’s lawsuit. RP 852. Dr. Palmer took this correspondence to be a threat to her continued contract with the SPD and it caused her “*great concern.*” RP 1272. She believed her involvement in Mehring’s litigation was causing instability in her relationship with Appellants and was a threat to her financial situation as collateral damage. RP 1273-4.

As Mehring’s civil trial preparation continued, Defendant Kirkpatrick received through discovery copies of Dr. Palmer’s highly confidential psychotherapy notes regarding Mehring. RP 848-9; Ex. 147. Within 17 minutes of receiving the medical records, Kirkpatrick utilized SPD’s unsecured email system, intentionally forwarding them to SPD officers! Id.; RP 723, 1407; Ex. 138 – Policy 212 “Electronic Mail.” Dr. Palmer never intended for her notes to be distributed outside of the specific individuals involved in the litigation. RP 1268-9. Dr. Palmer believed the notes could be misinterpreted and that Kirkpatrick’s forwarding them was unacceptable. RP 1269.

Kirkpatrick knew employees had rights to privacy regarding medical records and disciplinary records.<sup>8</sup> Yet, she nonetheless sent them

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<sup>8</sup> Kirkpatrick taught such matters at the N.W. Command College. Ex. 39 – Appendix C, pp. 9-13.

to unauthorized personnel using the City's unsecured email system. RP 723, 1407; Ex. 138; RCW 18.18.180 – Counselors “Confidential Communications.” She also knew this because the SPD had a policy stating “*The email system is not a confidential system since all communications transmitted on, to, or from the system are the property of the department. Therefore, the email system is not appropriate for confidential communications. ...Employees using the department's email system shall have no... expectation of privacy concerning communications utilizing the system.*” RP 1207-8; Ex. 138.

Trial in this case commenced on October 17, 2011. Kirkpatrick was first called in Plaintiff's case in chief, then later in Defendants' case, testifying at length. RP 620-51, 655-767, 787-856, 1330-1512. Ultimately, the jury totally discounted her credibility and rendered a verdict in favor of Plaintiff Mehring. CP 2707-9 – **Appendix D**, hereto.

V. **MEHRING'S RESPONSE TO APPELLANTS' OPENING BRIEF**

Here, Appellants' have appealed a plethora of supposed legal errors made by the Trial Court. The legal errors raised by this shotgun approach have no legal merit. Furthermore, Appellants' counsel has impermissibly “*thrown the chaff in with the wheat, ignoring their duty under RPC 3.1 to present only meritorious claims and contentions and*

*leaving it for this court [and Mehring's counsel] to cull the small number of colorable claims from the frivolous and repetitive.”<sup>9</sup>*

**A. Procedural Due Process.**

At the close of trial, Mehring moved for CR 50 Judgment as a Matter of Law regarding his pre-deprivation procedural due process claim, which the Trial Court granted. RP 1892. Notably, Appellants never moved for CR 50 JMOL regarding Mehring's post-deprivation procedural due process claim. As a result, Appellants waived their right to move for JMOL on that claim once it was submitted to the jury. CR 50(a)(2). Appellants, however, did move for a new trial and/or remittitur on both of Mehring's procedural due process claims pursuant to CR 59 and CR 60.

The standard of review applicable to the denial of a new trial is “*abuse of discretion.*” Aluminum Co. of America v. Aetna Cas. & Sur. Co., 140 Wn.2d 517, 537 (2000). “*The criterion for testing abuse of discretion is: [H]as such a feeling of prejudice been engendered or located in the minds of the jury as to prevent a litigant from having a fair*

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<sup>9</sup> Matter of Personal Restraint of Lord, 123 Wn.2d 296, 302-3 (1994). Courts do not tolerate scattershot briefing such as Appellants' 21 assignments of error including six based upon jury instructions never subject to objection or exception (Apps' Br., pp. 2-4, Errors 14-18 and 20); violations of Court Orders and failure to accurately cite to the record (fn. 11, infra, **Appendix E**); failure to set forth any standards of review (Apps' Br., pp. 20, 33-4, 42, 44, 49-50); misstatements of law (Apps' Br., p. 30, fn. 14; p.32; p. 39); misstatement of a Trial Court's holdings (Apps' Br., p. 21); citations to closing argument as purported fact (Apps' Br., pp. 48-9); and reliance upon evidence and testimony excluded pursuant to Motions in Limine and Offers of Proof (Apps' Br., pp. 24-5, fn. 11; p. 10, cite to RP 1788).

trial?” Id. Courts are loath to reverse a trial court’s discretion but will if the discretion was exercised on untenable grounds or untenable reasons, such as a misunderstanding of the meaning of a statute. State v. Downing, 151 Wn.2d 265, 272-3 (2004). Such is not even remotely the case here.

**1. Mehring’s Protected Property Interests In Continued Employment.**

“[T]he Fourteenth Amendment require[s]... an opportunity... granted at a meaningful time and in a meaningful manner ...for a hearing appropriate to the nature of the case.” Logan v. Zimmerman Brush Co., 455 U.S. 422, 437 (1982). A procedural due process claim has three elements: “(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; (3) lack of process.” Portman v. County of Santa Clara, 995 F.2d 898, 904 (9<sup>th</sup> Cir., 1993).

Washington courts have found that civil service police officers dischargeable only for cause have protected property interests in continued employment. Payne v. Mount, 41 Wn. App. 627, 633 (1985); Danielson v. City of Seattle, 108 Wn.2d 788, 796 (1987). It is uncontested that Mehring possessed a property interest in his continued employment as a police detective for Appellant City. Exs. 5 and 6. Thus, the first element of Mehring’s procedural due process claims was established.

Further, there is no dispute that Mehring was deprived of his protected property interest in continued employment when his pay, benefits, and association with the SPD was summarily terminated for 569 days on 3/30/07. RP 1020; Ex. 10. Therefore, the second element of Mehring's procedural due process claim was likewise established.

Government cannot deprive individuals of property interests within the meaning of the due process clause of the Fourteenth Amendment without procedural due process. Mathews v. Eldridge, 424 U.S. 319, 332 (1976). Here, Mehring was denied a pre-deprivation hearing. He was denied a post-deprivation hearing as well. Additionally, in failing to provide notice, an opportunity to be heard, and an impartial decision maker, Appellants violated the protections afforded him by the City's long established Felony Layoff Policy ("FLP"). Since Appellants failed to provide Mehring with any procedural due process, the third element of Mehring's procedural due process claims was satisfied.

**2. Mehring's Pre-Deprivation Procedural Due Process Rights.**

Appellants' Assignments of Error 1 and 2 both address Mehring's pre-deprivation procedural due process claim. Appellants' Summary of Argument suggests that errors 1 and 2 resulted from the Trial Court's "*erroneous legal ruling*" regarding the City's FLP and its significance to

pre-deprivation procedural due process as related to Mehring. However, Appellants' arguments ignore their own conduct and their flawed trial decisions and strategy invoking the Invited Error Rule and Judicial Estoppel, rendering criticism of the Trial Courts' grant of JMOL baseless.

a. **Invited Error Rule.** *“The rule is well settled that a party cannot successfully complain of error for which he is himself responsible or of rulings which he has invited the trial court to make.”* Graham v. Graham, 41 Wn.2d 845, 851 (1953). Accordingly, appellants who do not take exception to what they now claim to be an erroneous statement of the law have invited any resulting error. Id.

Here, the Invited Error Rule prohibits Appellants from belatedly arguing *“[t]he trial court erred by determining that omission of a local procedure violated Detective Mehring’s federal due process rights.”* See App.s’ Br., p. 19, 21-2, fn. 8-10. Not only did Appellants’ trial attorneys fail to take exception to what they now claim to be an erroneous statement of the law, they actually agreed at trial that it was the correct statement of law. During Mehring’s CR 50 Motion regarding violations of the FLP, Appellants’ attorneys completely agreed with the assertion *“that local procedures like the ad hoc committee procedure [within the FLP] are only relevant to the due process calculus, if they indeed set the floor for due process.”* RP 1884. As a result of that concession, Appellants cannot now

conversely argue to this Court that “[w]ell-established law provides that such local procedures are irrelevant to whether the federal threshold was met.” See App.s’ Br., p.19. Appellants’ present arguments suggesting trial court error are absolutely contrary to what they represented at trial! If there was error, which Respondent Mehring rejects, it was invited by Appellants.

**b. Judicial Estoppel.** Appellants’ inconsistent position here belies what they argued during Mehring’s CR 50 Motion and, as such, is precluded by judicial estoppel. “*Judicial estoppel is an equitable doctrine that precludes a party from gaining advantage by asserting one position in a court proceeding and later seeking a second advantage by taking a clearly inconsistent position.*” City of Spokane v. Marr, 129 Wn. App. 890, 893 (Div. III, 2005). Further, “*The doctrine applies ‘only if a litigant’s prior inconsistent position benefitted the litigant or was accepted by the court.’*” Id. Here, the Trial Court accepted Appellants’ position and found the City’s FLP met the floor for due process, and the City’s violation of that policy resulted in a ‘per se’ violation of Mehring’s constitutional rights, only after its counsel argued local procedures are relevant if they set the floor for due process. RP 1894. Judicial estoppel clearly prohibits Appellants from now arguing

a clearly inconsistent position to the one they argued earlier to the Trial Court. App.s' Br., p. 19, 21-2, fn. 8-10.

**c. The Trial Court Correctly Held The FLP Represented Minimal Due Process Requirements And Violation Of That Policy Was A 'Per Se' Violation Of Mehring's Constitutional Rights.** An agency's failure to follow its own rules is a 'per se' violation of procedural due process when the agency's rules represent minimal due process requirements. See Danielson v. City of Seattle, *supra*, at 797, n. 3 (1983). Appellants grossly mischaracterize the Trial Court's holding on this issue. The Trial Court did not hold the "*omission of a local procedure violated Detective Mehring's federal due process rights.*" App.s' Br., p. 21. Instead, the Trial Court found (based on argument that the City's FLP represented minimal due process requirements, i.e., notice and opportunity to be heard prior to deprivation of one's job) that the City's violation of the FLP was a 'per se' violation of Mehring's constitutional rights. RP 1890.

Appellants inexplicably failed to follow the City's FLP despite the fact that it unequivocally provides for notice and opportunity to be heard prior to deprivation of one's job. RP 868, 872-4, 1449, 1451, 1453; Ex. 8, **Appendix A**. As such, Mehring was never provided with an ad-hoc committee; no committee recommendations reduced to writing; no

opportunity to be heard or to tell his side of the story; and no unbiased review – it was Kirkpatrick who unilaterally decided to place him on unpaid leave status, not the Deputy Mayor, as required. RP 1032-3, 1456-8. This was all done admittedly in blatant violation of City policy and procedure. Because Appellants’ actions violated the FLP – which the Trial Court found set the floor for the minimal due process requirements necessary to protect an employee’s constitutional rights – the Trial Court correctly found Appellants committed a ‘per se’ violation of Mehring’s constitutional due process rights.

**d. Gilbert v. Homar.** Appellants grossly misrepresent the Trial Court’s consideration and review of Gilbert v. Homar, 520 U.S. 924 (1997) by erroneously asserting here that it overlooked the case. Apps’ Br., p. 30. Gilbert was extensively briefed, argued, and considered by the Trial Court “ad infinitum” before and after trial. 12/16/11 RP 6-9, 29, 38, 44; CP 1950-3, 2030, 2035-6, 2039, 2043, 2056-9, 2062, 2067, 2091, 2241, 2243, 2254, 2277, 2486, 2487-8, 2491, 2727, 2743, 2828-9, 3525, 3531, 3538-9, 3554-5, 3579-81, 3584. In fact, when deciding Appellants’ post-trial CR 59 and 60 Motions, the Court underscored the fact that “*the vast majority of the motion of new trial was a revisiting of issues that we have talked about ... extensively....*” RP 39.

Moreover, in an apparent attempt to create judicial error Appellants distort the holding in Gilbert arguing Mehring was not entitled to any pre-termination due process. As explained in Mustafa v. Clark County Sch. Dist., 157 F.3d 1169 (9th Cir., 1998), Gilbert stands for the proposition that “*government does not have to give an employee charged with a felony a paid leave at taxpayer expense when the employee occupies a position of great public trust and high public visibility **and** is given a sufficiently prompt postsuspension hearing, rendering the lost income relatively insubstantial compared with termination.*” Id. (citations omitted) (emphasis added).

The law is clear that “[*s*]ummary suspensions with minimal or no pre-suspension due process are constitutional only if followed by adequate post-suspension procedures. Take away those post-suspension procedures, and the suspensions are no longer constitutional under the Due Process Clause.” Assoc. for L.A. Deputy Sheriffs (ALADS) v. County of L.A., 648 F.3d 986, 993 (9th Cir., 2011), (citing Gilbert). Furthermore, Appellants’ argument completely ignores that the Gilbert court remanded the question of whether the employer violated due process by failing to provide a prompt post-suspension hearing. Gilbert v. Homar, supra, at 935-6. Accordingly, the remand in Gilbert underscores the fact that while an employee may be terminated without pre-deprivation due

process, that act is only constitutional when sufficiently prompt, post-deprivation due process is given.

Here, the facts clearly evidence Appellants failed to follow their own FLP prior to subjecting Mehring to loss of all pay and benefits without providing any sufficiently prompt, meaningful, post-suspension hearing. RP 836-8; Ex. 41. Quite simply, the only time a lack of pre-deprivation process is constitutionally sound is when adequate post-suspension procedures are provided which undisputedly did not occur here. ALADS, supra, at 993. The fact that Appellants violated Mehring's due process rights was extensively briefed and argued pre-trial and decided correctly against Appellants. There was also substantial trial testimony regarding Appellants' failure to follow the FLP. RP 1449, 1451, 1453, 1530. Appellants simply never followed the City's FLP. "*It's the ad hoc committee procedure which we admittedly didn't follow.*" RP 1893.

The Trial Court considered all the evidence and testimony in the light most favorable to Appellants. It was more than sufficiently established that Mehring's right to procedural due process was violated. The Trial Court determined the FLP was a policy providing minimal due process necessary to protect an employee's constitutional rights. Here, it was blatantly not followed. Mehring's CR 50 Motion for Judgment as a

Matter of Law was correctly granted, thus denial of Appellants' CR 59 and CR 60 Motions regarding the pre-termination violation of due process rights did not constitute error.

**3. Mehring's Post-Deprivation Procedural Due Process Rights.**

Appellants' Assignments of Error 3 and 4 both deal with Mehring's post-deprivation procedural due process claim. Appellants' main argument seems to be premised upon the faulty legal assertion that Mehring's alleged failure to exhaust administrative remedies precluded a finding of a due process violation. Although unclear, it appears what is really being appealed is the jury's unanimous verdict. Accordingly, the applicable standard of review is substantial evidence. "*Substantial evidence entails a relatively low threshold of proof and exists when 'there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.'*" Sunderland Family Treatment Services v. City of Pasco, 127 Wn.2d 782, 801 (1995). "*Under the substantial evidence standard of review, the reviewing court defers to the fact-finder's assessment of witness credibility.*" Id. Here, the jury frankly found little about Appellants' testimony or bearing credible.

Indeed, Kirkpatrick's trial testimony made clear her inviolable cardinal rules were not applicable to her. She rationalized her testimony

claiming not to be “*a detail lady*” (RP 628), while uniformly answering questions evasively with either “*I don’t recall*” (RP 633, 638, 716-8, 728-9, 735, 737, 754, 812, 819, 831, 1424, 1442, 1444, 1451-2, 1470, 1473, 1486, 1504, 1509), “*I don’t know*” (RP 640, 642, 689, 703, 738, 754, 767, 799, 812, 830-1, 855, 1404, 1406, 1416-7, 1420, 1423, 1439, 1448, 1453, 1473), or that she needed her memory refreshed. RP 680, 691, 819, 830-1, 1443, 1451, 1462.

She did admit there are exceptions to public disclosure that permit keeping information confidential, and that she had discretion to refuse media interviews. RP 744; 1437. Nonetheless, Kirkpatrick, a lawyer with 27 years in law enforcement, chose to hold a press conference to “out” undercover drug enforcement Officer Mehring, confidential photo and all. RP 716, 736, 744-6. The self-proclaimed “*ultimate decision maker on discipline*” with self-perceived unilateral authority to execute decisions regarding employee punishment, Kirkpatrick readily testified she did not at all like to postpone discipline but preferred to give her “*spanking really close.*” RP 682, 703-5, 749, 1336-7, 1456-8, 1466-7. And so she did!

Kirkpatrick also readily believed she was somehow specially entitled to take action contrary to established policy, procedure, and law. Kirkpatrick had authored a Leadership and Discipline presentation which she taught to the NW Command College on 3/13/08. RP 719-20; Ex. 39,

**Appendix C.** Incredibly, only months after teaching other police officers that medical records are confidential and must be kept in a secure location, Kirkpatrick intentionally emailed out Mehring's medical records. RP 723, 848-53, 1406-7; Exs. 39 and 147. Despite teaching officers that work email is not secure or private, Kirkpatrick utilized the SPD's email system to: advise employees she had concerns regarding Mehring's "*mental and emotional status*," to forward his confidential medical records, and to threaten Dr. Palmer with contractual repercussions. RP 723, 842-43, 848-53, 1272-74, 1406-7; Exs. 5, 39, 62 and 147.

Despite teaching other officers about the legal requirements of due process, Kirkpatrick failed to afford Mehring pre-termination notice and hearing in violation of legal requirements as well as the Appellant City's Felony Layoff Policy. RP 457, 500-5, 724, 1541; Exs. 8 and 39. Kirkpatrick also failed to ensure Mehring was provided with a post-termination hearing and never provided him with Garrity protections. RP 789-90, 828, 836-8, 1032. In fact, Kirkpatrick testified both in Mehring's criminal trial and before the jury here that it was her choice to place Mehring on layoff status. "[I]t is my choice, yes, different chiefs do it differently. It is my choice and that's all we've done so far." Later she readily admitted she did not have the authority to deviate from the FLP at issue. RP 1520, 1456. Kirkpatrick, also acknowledged the City's

employee handbook requires her to “*base employment-related decisions on fair and equitable standards and job-related criteria.*” Yet, she deliberately opened a punitive IA investigation against Mehring for insubordination because he had received vacation approval from his sergeant as was customarily done, rather than getting approval from command staff. RP 712-8, 844-5, 1391; Exs. 4, 86, and 89.

With respect to the alleged DV threats attributed to Mehring, Kirkpatrick never interviewed any witnesses, Lisa Mehring, the Mehrings’ sons, either of the two “reporting” fellow officers, any of the Mehrings’ friends, was not present during the purported argument, did not view or discover any text messages containing purported DV threats, and heard no telephone conversations of the Mehrings. RP 1458-61. Instead, relying upon hearsay and punitive motivation, she chose to disregard her own adage that “*facts not in context do not lead to the truth,*” ignored the criminal jury’s finding of not guilty, and later SPD’s determination that Mehring’s alleged conduct had not occurred. In doing so, she self-proclaimed Mehring as guilty, announced him to be a negligent retention employee, and deemed him unfit for Task Force undercover assignment. RP 757, 1410, 1460, 1486, 1504; Exs. 32 and 34.

After reviewing evidence and hearing testimony, the jury here unanimously found Appellants violated Mehring’s post-deprivation

procedural due process rights. CP 2707 9, **Appendix D**. Even though Appellants never sought a CR 50 JMOL regarding Mehring's post-deprivation procedural due process claim, they did move for a new trial and/or remittitur on this claim (CR 59 and CR 60). CP 2718-48. Their motions were denied because substantial evidence did indeed support the Trial Court's rulings and the jury's verdict. 12/16/11 RP 41. Appellants now appear to be appealing denial of their Motion for a New Trial. If so, the applicable review is abuse of discretion. See Aluminum Co. of America v. Aetna Cas. & Sur. Co., supra. Nonetheless, Appellants' request to reverse the jury verdict, and/or the Trial Court's rulings is based upon misplaced legal arguments and on the unsupportable assertions that: (1) Mehring waived his rights by failing to exhaust administrative remedies; (2) the Trial Court erred by instructing the jury regarding Garrity; and/or (3) an employee only has one right to procedural due process.

**a. Mehring Waived None of His Rights.** Appellants have contrived an argument relying upon evidence and testimony never presented to the jury. Mehring never waived his speedy trial rights thereby preventing Appellant City from according him sufficiently prompt, meaningful, post-deprivation procedural due process. The fact is the Trial Court granted Mehring's Motion in Limine excluding any and all

references, testimony, and/or evidence regarding his alleged waiver of speedy trial rights. Thus, Appellants' unsupported argument on pp. 24-5 of their Opening Brief, all of which is impermissibly supported by fn. 11, is baseless and must be stricken. More pointedly, Appellants waived the right to raise this issue by failing to appeal the Trial Court's grant of Mehring's Motion in Limine. Thus, the only preserved argument currently before this Court is the strained contention that Mehring waived his rights by failing to exhaust administrative remedies. Apps' Br., pp. 25-8.

As a matter of law, Mehring was not required to first exhaust administrative remedies prior to bringing claims addressing Appellants' violations of his constitutional right to due process. In Felder v. Casey, 487 U.S. 131, 147 (1988), the Supreme Court explained that while "*States retain the authority to prescribe the rules and procedures governing suits in their courts.... That authority does not extend so far as to permit States to place conditions on the vindication of a federal right.*" A waiver of a constitutional right is "*not to be implied and it is not lightly to be found.*" U.S. v. Provencio, 554 F.2d 361, 363 (9th Cir., 1977). In fact, courts "*indulge every reasonable presumption against waiver of fundamental constitutional rights and ... do not presume acquiescence in the loss of fundamental rights.*" Johnson v. Zerbst, 304 U.S. 458, 464 (1938)

overruled on other grounds by Edwards v. Arizona, 451 U.S. 477 (1981). Accordingly, “Constitutional rights may ordinarily be waived only if it can be established by clear and convincing evidence that the waiver is voluntary, knowing, and intelligent.” Gete v. I.N.S., 121 F.3d 1285, 1293 (9th Cir., 1997). “Because waiver is a defense, defendants have the burden of proving the existence of a knowing waiver.” Barberic v. City of Hawthorne, 669 F.Supp. 985, 992 (C.D. Cal., 1987). Appellants unquestionably failed to meet that burden.

In Ostlund v. Bobb, 825 F.2d 1371 (9th Cir., 1987), the defendant city argued the peace officer’s procedural due process claim had to be dismissed, because “*Ostlund waived his right to a hearing by not requesting one after the City made its final determination...*” Id. at 1373. However, the Ostlund court held plaintiff had not knowingly and voluntarily waived his right to a hearing and the defendant city’s failure to provide plaintiff with a hearing constituted a procedural due process violation. Id. A finding of a constitutional violation was based on the fact that the plaintiff was not “*aware that he was entitled to a hearing, and the City never informed [him] that he was entitled to a hearing.*” Id. at 1373. The exact same is true here. As in Ostlund, the claim that Mehring knowingly waived his right to a sufficiently prompt, meaningful post-deprivation hearing fails since Appellants likewise clearly never

informed Mehring he was entitled to a hearing, and Mehring testified he was unaware of any such right. RP 1110. Accordingly, Mehring's alleged failure to demand a hearing could not be a knowing and voluntary waiver.

Appellants' assertion that "*Detective Mehring has never shown that a Union arbitration would have been inadequate*" is patently false. See App.s' Br., p. 27. The terms of the City's 2006-09 Collective Bargaining Agreement (CBA) are expressly inapplicable to this case. Ex. 7. The CBA states "*lay off [of] employees in accordance with current Civil Service Rules*" is an "*inherent management responsibilit[y]... **not subject to arbitration.***" (emphasis added). See Ex. 7, pp. 2-3. Additionally, Appellants' own HR witness testified that the layoff of an employee in accordance with the Civil Service Rules was "*a decision... [that] would not be able to go to arbitration. ...[the Guild] simply couldn't pursue it to arbitration.*" RP 1532-3, 1535. Without the availability of arbitration, an employee is left with filing litigation. RP 1536. By its very terms, the City's CBA did not provide an administrative remedy by which Mehring could have sought redress for his 2007 unpaid layoff status.

Likewise, Appellants' assertion Mehring was required to utilize the "*Spokane Civil Service Commission rules, which allow for a hearing when an employee is aggrieved by a personnel action like layoff or suspension*" is equally meritless. The City's own HR Director testified that the City's

Civil Service Rule IX, at the time it was used to separate Mehring from the SPD, meant “*that appeal process... was not available....*” RP 1538-39. Further, Kirkpatrick’s separation letter issued to Mehring moments before his arrest never advised him of the availability of a hearing but rather specifically stated “*normal lay off and reinstatement procedures will not apply....*” RP 1541; Ex. 10. Appellants’ argument that Mehring failed to exhaust either his Union or Civil Service procedures is simply unsupported. Finally, Appellants’ citations to Alvin v. Suzuki, 227 F.3d 107 (3rd Cir., 2000); Conward v. Cambridge School Committee, 171 F.3d 12 (1st Cir., 1999); N.Y. St. Nat’l Org. for Women v. Pataki, 261 F.3d 156 (2d Cir., 2001); Suckle v. Madison Gen. Hosp., 499 F.2d 1364 (8th Cir., 1974); or Krentz v. Robertson, 228 F.3d 897 (8th Cir., 2000), do nothing to assist them. None of these cases are remotely analogous to the facts presented here.

Alvin, is inapplicable. Mehring was never advised of any administrative procedures available to him. Conward v. Cambridge School Committee, supra, at 23-4, is inapposite, as it deals with a claim for a pre-deprivation procedural due process violation where the employee refused to provide his version of events. Here, Mehring testified unchallenged that he was never given a meaningful opportunity to present his side of the story either pre- or post-deprivation. RP 1032-3, 1044-5,

1161, 1164, 1201. As for N.Y. v. Pataki, supra, Appellants rely upon dicta taken out of context and upon distinguishable facts where alternate procedural forums were available for pursuing the discrimination claims. Here, there were no alternative procedural forums available to Mehring. Appellants' own HR witness testified when arbitration was unavailable, litigation was the remaining option. RP 1536. As to the Civil Service Rules, Appellants themselves advised Mehring that normal appeal procedures were not available. Ex. 10.

Suckle is also distinguishable in that it involved a physician who refused an offer of a pre-termination hearing. The court held "*He cannot sue in federal court to secure a right which he declined when it was voluntarily offered to him.*" Supra at 1367. Here, there was extensive testimony and numerous exhibits illustrating Mehring was never offered a hearing but was instead explicitly advised that normal appeal procedures did not apply. RP 789-90, 1032-3, 1538-9, 1541; Ex. 10. This is the same testimony and evidence relied upon by the Trial Court in denying Appellants' Motion for a New Trial. 12/16/11 RP 41-4. Finally, in Krentz, the court specifically found the plaintiff was aware of but did not avail himself of the available administrative procedures. This is not the case here for the same reasons stated above. Mehring was told no appeal

procedures were available to him regarding his termination. RP 1538-9, 1541; Ex. 10.

**b. The Court Did Not Err Instructing The Jury On Garrity.** Whether an instruction is an error of law is reviewed de novo. Giving a particular instruction is reviewed for an abuse of discretion. Thomas v. Wilfac, Inc., 65 Wn. App. 255, 264 (1992). Garrity is a protection commonly utilized by law enforcement officers during Loudermill hearings. See Garrity v. New Jersey, 385 U.S. 493 (1967). Appellants do not argue the Garrity instruction here as an error of law but rather whether it was error to instruct the jury on Garrity. App.s' Br., p. 29.

Garrity contemplates an invocation that may be made by an officer being questioned regarding actions that may result in criminal prosecution. Id. By invoking Garrity protection, the officer is invoking his right against self-incrimination. Id. Accordingly, any statements made by an officer after invoking Garrity rights may only be used for departmental investigation purposes and not for criminal prosecution purposes.

*“Conceiving the choice imposed upon them, i.e. self-incrimination or job forfeiture, was tantamount of coercion, thereby rendering their statements involuntary, the United States, Supreme Court, in a five to four decision, reversed their convictions stating.... We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in*

*subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic.”*

Seattle Police Officers’ Guild v. City of Seattle, 80 Wn.2d 307, 310 (1972), citing Garrity. During trial here, the jury heard extensive testimony regarding Kirkpatrick’s conduct in scheduling a Loudermill hearing<sup>10</sup>. RP 495-6, 506-9, 574-5, 789-90, 1160-1, 1365, 1368. Appellants and Mehring’s counsel both examined witnesses regarding Garrity. RP 828, 1032. As a result, the Court did not abuse its discretion by then instructing the jury as to Garrity. “*A party is entitled to have the court instruct on its theory of the case if there is substantial evidence to support it.*” Delahunty v. Cahoon, 66 Wn. App. 829, 837 (Div. III, 1992).

Furthermore, Appellants misstate the holding in Seattle Police Officers’ Guild, supra. Apps’ Br., p. 30, fn. 14. In that case, Garrity was thoroughly analyzed. It was held the City of Seattle could not be enjoined from questioning its officers because the questions posed were to “*be specifically, directly and narrowly related to the past performance of their official duties,*” and the officers were not required to waive any immunity under Garrity or otherwise. Id. Additionally, the officers to be questioned

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<sup>10</sup> The jury did not believe Kirkpatrick canceled Mehring’s Loudermill hearing due to purported pressure from the Guild. Rather, the jury rightly decided Kirkpatrick did exactly what she testified to under oath – namely she canceled the Loudermill hearing based upon advice from her attorneys. RP 789-90.

were to be advised that “*information supplied through their answers could not be used against them in later criminal proceedings, and that their refusal to cooperate in the investigation could result in their dismissal.*” Id. Specifically, the Court held “[u]nder these circumstances we are convinced that within the procedural formula of the Garrity, Spevack, Gardner and Uniformed Sanitation cases, the Fifth Amendment privilege against self-incrimination would not be a bar to discharge of an officer ... who refused to answer questions pertaining to the use or abuse of his official duties.” Id. at 314.

The facts here differ starkly from those in Seattle Police Officers’ Guild. Mehring and his criminal defense lawyer read Kirkpatrick’s 5/10/07 letter requesting he provide a written recommendation of “*other investigative follow up*” as being a demand to make a statement in contravention of his Fifth Amendment right against incrimination or waive the right to present his defense. RP 1032-3; Ex. 16. “*If we do not hear from you on or before this date [May 21, 2007] it will be understood that you have declined to provide additional information.*” Ex. 16.

The fact that Kirkpatrick’s demand was sent prior to the completion of Mehring’s criminal trial put it in direct contravention of Garrity. Kirkpatrick’s 5/10/07 letter specifically stated “*any statement made by you... can be used against you in your pending criminal matter.*”

Ex. 16. Mehring felt he was being forced between choosing to make a statement thereby giving up his Miranda rights contrary to legal advice or not giving his side of the story. RP 1164. Pursuant to Garrity, this untenable choice constituted an impermissible violation of Mehring's Fourteenth Amendment right to procedural due process. Thus, the Trial Court did not abuse its discretion or commit error in instructing the jury on Garrity.

**c. Appellants' Position That Employees Have One Procedural Due Process Right Is Not The Law.** Recently, E.D. of Washington Federal Judge Thomas Rice rendered an instructive decision in an analogous due process case. While his holding is certainly not controlling, it is persuasive, as it mirrors exactly what the Trial Court did when it sent Mehring's post-deprivation procedural due process claim to the jury after granting CR 50 JMOL on his pre-deprivation procedural due process claim. Judge Rice wrote the "*Ninth Circuit has held that the court 'must also independently assess the adequacy of the post-termination proceedings. For not only is such an assessment usually required to determine the necessary scope of pre-termination procedures, but the inadequacy of post-termination process may itself be a source of a distinct due process violation.'*" Taylor v. City of Cheney, (slip copy) 2012 WL 5361424 (E.D. Wash. Oct. 31, 2012) citing Clements v. Airport

Authority of Washoe County, 69 F.3d 321, 332 (9th Cir., 1995) (emphasis added) (**Appendix I** hereto). Appellants grossly distort existing jurisprudence when misstating an employee has only one right to procedural due process. Apps' Br., p. 32. The Trial Court here committed no error.

**B. Since Mehring's Retaliation Claim Was Viable, Kirkpatrick Had No Qualified Immunity.**

Appellants' Assignment of Error 5 argues that the "*trial court erred by allowing the retaliation claim to go to the jury,*" and Mehring "*failed to present sufficient evidence to establish the necessary elements of his retaliation claim.*" App.s' Br., pp. 1 and 19. An appellate court reviews a Trial Court's decision denying a motion for judgment NOV by applying the same standard as the Trial Court. Indus. Indem. Co. of the N.W., Inc. v. Kallevig, 114 Wn.2d 907, 915 (1990). "*A directed verdict or judgment n.o.v. is appropriate if, when viewing the material evidence most favorable to the nonmoving party, the court can say, as a matter of law, that there is no substantial evidence or reasonable inferences to sustain a verdict for the nonmoving party.*" Id. The requirement of substantial evidence necessitates that the evidence be such that it would convince 'an unprejudiced, thinking mind,' and the inquiry on appeal is limited to

whether the evidence presented was sufficient to sustain the jury's verdict.

Id.

On 12/19/09, Mehring exercised his right of free speech by filing suit seeking redress for violation of his constitutional rights as well as for Appellants' tortious conduct. See CP 9. Mehring's allegations that Appellants violated his 4<sup>th</sup> and 14<sup>th</sup> Amendment rights clearly implicated the exposure of significant government misconduct. Once the Trial Court determined Mehring spoke as a citizen on a matter of public concern, not as an employee, the jury was tasked with determining (1) whether Appellants took an adverse employment action against him; and (2) whether Mehring's lawsuit was a substantial or motivating factor for the adverse employment action. RP 1951; see CP 2692 (Instruction No. 19). Here, the Court's Instruction No. 19 stated "*An action is an adverse employment action if a reasonable employee would have found the action materially adverse, which means it might have dissuaded a reasonable worker from engaging in protected activity.*" Id. The jury was further instructed that a "*substantial or motivating factor is a significant factor.*" Id. Ultimately, the jury found sufficient evidence to support Mehring's retaliation claim and a verdict.

**1. After Mehring Sued, Appellants Violated His Constitutional Rights By Retaliating Via Adverse Employment Actions.**

*“The First Amendment shields public employees from employment retaliation for their protected speech activities.”* Karl v. City of Mountlake Terrace, 678 F.3d 1062, 1068 (9th Cir., 2012). *“Out of recognition for ‘the State’s interests as an employer in regulating the speech of its employees, however, we must arrive at a **balance** between the interests of the public employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.”* Id. (emphasis added) (citations omitted). The “balance” referred to in Karl at 1068 is achieved by asking a sequential five-step series of questions.

*“First, we consider whether the plaintiff has engaged in protected speech activities, which requires the plaintiff to show that the plaintiff: (1) spoke on a matter of public concern; and (2) spoke as a private citizen and not within the scope of her official duties as a public employee. If the plaintiff makes these two showings, we ask whether the plaintiff has further shown that she (3) suffered an adverse employment action, for which the plaintiff’s protected speech was a substantial or motivating factor. If the plaintiff meets her burden on these first three steps, thereby stating a prima facie claim of First Amendment retaliation, then the burden shifts to the government to escape liability by establishing either that: (4) the state’s legitimate administrative interests outweigh the employee’s First Amendment rights; or (5) the state would have taken the*

*adverse employment action even absent the protected speech.”*

The Trial Court here correctly concluded Mehring’s original Complaint constituted speech on a matter of public concern. RP 1949, 1951-2. The jury in turn then answered the Special Verdict question determining that Mehring had filed his lawsuit as a private citizen. CP 2707-9, **Appendix D**. That was followed by the Jury’s answer confirming that Appellants had been motivated by the lawsuit to take adverse employment actions against Mehring. *Id.* Appellants’ attempted defense was to establish they would have taken the adverse employment actions at issue regardless of Mehring’s lawsuit. RP 587-8, 594, 1380, 1392, 1397, 1708-10, 1744-5, 1823; 12/16/11 RP 20. The jury’s unanimous verdict rejected that position and awarded \$250,000 in punitive damages underscoring that Appellants failed to meet their defense burden. CP 2707-9, **Appendix D**.

**a. Mehring Spoke on Matters of Public Concern.**

*“Whether an employee’s speech addresses a matter of public concern is a pure question of law that must be determined ‘by the content, form, and context of a given statement, as revealed by the whole record.’”* Karl, *supra*, at 1069. *“Of these three factors, the content of the speech is generally the most important.”* Karl, *supra*, at 1069. *“[S]peech involves*

*a matter of public concern when it can fairly be considered to relate to any matter of political, social, or other concern to the community.”* Karl, supra, at 1069. *“Just as speech whose content exposes potential government misconduct is speech on a matter of public concern, so too is speech made in the context of litigation brought to expose such wrongful conduct.”* Id., *“So long as either the public employee's testimony or the underlying lawsuit meets the public concern test, the employee may, in accord with* Connick, *be afforded constitutional protection against any retaliation that results.”* Karl, supra, at 1069, citing Alpha Energy Savers, Inc. v. Hansen, 381 F.3d 917, 926–7 (9th Cir., 2004).

In denying Appellants’ CR 50 Motion, the Trial Court here analyzed in depth the content, form, and context of Mehring’s original Complaint and concluded:

*“[I]t’s very true that this case is about allegations of constitutional violations, and that’s been in the case from the beginning. ...the real major claims here are the constitutional claims. ... It isn’t just about Detective Mehring’s personnel, personal issues.... The issue of how this all happened or how it came down and whether or not it passed muster constitutionally is clearly of interest, if nothing else, to the police department and to the public. ... There’s... been a lot of scrutiny of the Spokane Police Department for the last few years, and it’s coming to a head. ...So it’s kind of unique for this community right now. The last few years, there’s been a heightened sense of police department functioning at all levels.... So for all those reasons, Counsel, there’s enough public interest... to send it to the jury....”*

RP 1949, 1951-52. Appellants' reliance upon Harrell v. Wn. State ex rel. D.S.H.S., 170 Wn. App. 386 (Div. II, 2012) is misguided. Apps' Br., pp. 36-37. In Harrell, the Trial Court dismissed plaintiff's civil rights claims "on the grounds that the speech was not of public interest." Id. at 407. Unlike Mehring here, the plaintiff in Harrell did not raise an issue regarding significant government misconduct, e.g., the violation of an individual's due process rights but, instead, simply raised a personnel issue involving alleged deficient lighting. Id.

**b. Mehring's Lawsuit Was As A Private Citizen, Not As Part Of His Official Job Duties.** The second question in the above Karl analysis is not disputed. Mehring sued Appellants as a private citizen and not as part of his employee duties.

**c. Mehring's Protected Speech Was A Substantial Or Motivating Factor For Appellants' Adverse Employment Actions.** Appellants' fall back assertion is that their adverse employment actions were inconsequential, because there was a lack of official discipline. Apps' Br., p. 38. Yet, Jury Instruction No. 19 accurately set forth the law and correctly defined an adverse employment action, and "official discipline" is not part of that definition as Appellants erroneously suggest. CP 2692. Furthermore, Washington case law defines adverse employment action as involving "a change in employment conditions that is more than

*an inconvenience or alteration of job responsibilities such as reducing an employee's workload and pay [or] [a] demotion or adverse transfer."* Campbell v. State, 129 Wn. App. 10, 22 (Div. III, 2005). Based upon substantial testimony and evidence presented at trial, the jury rightfully concluded that Appellants retaliated against Mehring for exercising his First Amendment rights of free speech and redress by the Courts.

Notably, the testimony and evidence presented at trial overwhelmingly supports that Appellants placed Mehring on administrative leave in retaliation for filing his lawsuit. Appellants clearly intended to keep him out of the workplace "*until resolution of the lawsuit.*" Ex. 183. Further, the evidence and testimony illustrated that Appellants' decision to place Mehring on leave was not a simple "*management decision*" and had nothing to do with a "*concern*" for his wellbeing. Apps' Br., p. 38. See Exs. 179, 183. The jury heard that Appellants' conduct was undertaken for retaliatory purposes and as litigation strategy. Id. Mehring successfully proved retaliation was the motive behind Appellants' adverse employment actions. "*Proximity in time between the adverse action and the protected activity, along with evidence of satisfactory work performance, suggests an improper motive.*" Campbell, supra, at 23. Here, Appellants' retaliatory conduct began just shortly after Mehring initiated his lawsuit against them. RP 665, 674, 681,

842-3, 1390, 1393-4; Exs. 54, 56, 60, 62, 64, 74, and 77. Mehring clearly established a prima facie case of retaliation.

Appellants' assertion that Mehring "*failed to show that his speech interests were greater than the employer's interest in effective and efficient fulfillment of public responsibilities*" grossly distorts the law and ignores the facts. App.s' Br., p. 39. Once Mehring successfully demonstrated that his lawsuit constituted speech on a matter of public concern; that he filed his lawsuit as a private citizen and not as a detective for the SPD; and further demonstrated he suffered adverse employment actions for which his lawsuit was a substantial or motivating factor, Appellants were required to establish either (1) their legitimate administrative interests outweighed Mehring's First Amendment rights, or (2) that they would have taken the adverse employment actions absent his speech conduct. Karl, supra, 1068. Appellants failed to do either.

Further, Appellants misstate the holding in Harrell, supra, at 171. The court in Harrell did not hold that the issue of whether the city's interest outweighs the employees is a part of the employee's burden of proof as Appellants state. Apps' Br. p. 39. In fact, the Harrell court does not even address that element, as the plaintiff's claim there was dismissed due to failing to "*carry his burden to demonstrate that his speech touched on a matter of public concern.*" Id. Here, the jury simply did not believe

Appellants' adverse actions toward Mehring were justified. The jury, in considering all the testimony and evidence, unanimously found the campaign of adverse actions against Mehring would not have occurred absent his litigation. As a result, Appellants were found liable for the injury they caused. See CP 2707-9, **Appendix D**. Thus, the Trial Court did not err in denying Appellants' CR 50 trial motion or in denying Appellants' CR 50, 59, and 60 post-trial motions.

**2. Mehring Had A Clearly Established Constitutional Right Not To Be Retaliated Against In Raising Matters Of Public Concern.**

Having established that Mehring prevailed on proving a constitutional violation, the next issue under the Karl analysis is whether the “*contours*” of Mehring’s First Amendment rights were “*sufficiently clear that every reasonable official would have understood that what he is doing violates that right.*” Karl, supra, 1073. The Karl court unequivocally set forth the standard to be used. “*Whether the law was clearly established is an objective standard; the defendant’s subjective understanding of the constitutionality of his or her conduct is irrelevant.*” Id.

Kirkpatrick futilely seeks immunity for her unlawful conduct. “*Qualified immunity is designed to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful.*” Karl, supra, at

1073. Accordingly, the question here is whether existing law at the time of Kirkpatrick's conduct in 2009 through 2011 provided her notice that the First Amendment prohibits retaliation against an employee for seeking redress for a violation of his constitutional rights. Notably, "*closely analogous preexisting case law is not required to show that a right was clearly established.*" Karl, *supra*, at 1073. The Karl court went on to hold "*It has been clearly established since at least 2004 that judicial and administrative proceedings are matters of public concern when they seek to expose 'potential or actual discrimination, corruption, or other wrongful conduct by government agencies or officials.'*" Id. at 1074.

Kirkpatrick was therefore on notice that Mehring's 42 U.S.C. § 1983 action was a matter of public concern, "*for any reasonable official would know that unlawfully retaliating against a public employee for his protected speech activities constitutes 'significant government misconduct.'*" Id. at 1074. Additionally, a reasonable official, particularly a licensed lawyer such as Kirkpatrick, "*would also have known that a public employee's speech on a matter of public concern is protected if the speech is not made pursuant to her official job duties, even if the testimony itself addresses matters of employment.*" Id. This is especially so when the speech at issue is in connection with a judicial proceeding, namely filing a lawsuit seeking redress for significant government misconduct

such as due process rights violations. Here, as in Karl, “*the relevant principles were all clearly established long before the events in question, such that ‘every reasonable official would have understood that what he is doing violated’*” First Amendment rights to be free from workplace retaliation. Karl, *supra*, at 1074.

**C. Punitive Damages Were Properly Awarded Against Kirkpatrick.**

Punitive damages may be assessed under 42 U.S.C. § 1983 when a defendant’s conduct is shown to be motivated by evil motive or intent or if it involves reckless or callous indifference to the federally protected rights of others. Fair Housing of Marin v. Combs, 285 F.3d 899, 906 (9th Cir.2002) (citing Smith v. Wade, 461 U.S. 30, 56 (1983)).

The Trial Court here correctly denied Appellants’ CR 50 trial motion seeking to dismiss Mehring’s claim for punitive damages. RP 1303, 1313. In doing so, the Trial Court held the testimony and evidence regarding Appellants’ alleged adverse employment actions presented “*potential issues with reasonable inference that they either might be reckless or there may be an intent involved.*” RP 1316. The basis for the Trial Court’s denial of Appellants’ CR 50 motion was unequivocal.

*“The Plaintiff has talked about... the fitness for duty exam... the internal affairs investigation and the ultimate*

*resolution on the second that required him to report to the Chief for or ask for vacations and that sort of thing. The disclosure of the psychotherapy notes of Dr. Palmer as an attachment to this email... plaintiff is entitled to all the reasonable inferences with regard to that conduct. And I think particularly the psychotherapy notes issues is a significant issue.... I'm satisfied that the plaintiff should be allowed to go to the jury with the punitive damages."*

RP 1316. Subsequently, the jury unanimously found Kirkpatrick had retaliated against Mehring and awarded \$250,000 in punitive damages against her. Post trial, Appellants filed CR 50, 59, and 60 Motions seeking judgment as a matter of law, a new trial, and an order vacating the judgment and/or remitting the jury award of punitive damages to zero. CP 2733. Those Motions were all properly denied.

The Trial Court's post-trial refusal to vacate and/or remit the jury's award of punitive damages has in fact only strengthened this verdict. In determining whether to vacate a jury's award of punitive damages, the appropriate standard of review is abuse of discretion. "*When the trial court refuses to remit the award, then our case law says the verdict is strengthened and the discretion of the trial court should be respected.*" Bunch v. King County Dep't of Youth Servs., 155 Wn.2d 165, 176 (2005). Accordingly, "*Trial court orders denying a remittitur are reviewed for abuse of discretion using the substantial evidence, shocks the conscience,*

*and passion and prejudice standard articulated in precedent.”* Id. The Bunch court emphatically recited longstanding law:

*“The damages, therefore, must be so excessive as to strike mankind, at first blush, as being, beyond all measure, unreasonable and outrageous, and such as manifestly show the jury to have been actuated by passion, partiality, prejudice, or corruption. In short, the damages must be flagrantly outrageous and extravagant, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess.”*

Id. at 179 (cites omitted). The jury is given the constitutional role to determine questions of fact. The amount of damages is a question of fact. Further, there is a strong presumption that the jury’s verdict is correct. *“The jury’s role in determining noneconomic damages is perhaps even more essential.”* Bunch, supra, 179-80. Here, the jury had substantial evidence upon which its award was based.

Kirkpatrick admitted that Mehring’s reinstatement was not her decision (RP 763; Ex. 34); that she emailed pleadings favorable to Appellants to Mehring’s peers and refused his request to similarly email his pleadings (RP 842; Exs. 54, 56); that she was the one who placed him on administrative leave (RP 665, 674, 681; Ex. 60); that she threatened multiple psychological evaluations (RP 1390, 1393-4; Exs. 64, 74, 77); that she advised his peers she had concerns over his mental and emotional status (RP 842-43; Ex. 62); that she initiated an Internal Affairs

investigation for insubordination (RP 844-5; Exs. 86, 89); that she required him to be on a 60-minute reporting “leash” as the only SPD Detective to report directly to her when seeking any leave or time off (RP 1080, 1205; Ex. 91); and that she forwarded his highly confidential psychological notes to his peers (RP 723, 848-9, 1407; Exs. 39, 147). All of this was done as a campaign within 24 months after Mehring filed suit, underscoring her callous indifference to his rights and her intent to ensure his career was destroyed. It was obvious to the jury that there was substantial factual support for a damage award.

Appellants’ assertion that “*there was no basis in fact or law for an award of punitive damages in this case*” (App.s’ Br., p. 42), makes it appear as if they were in attendance at a different trial. Here, substantial evidence and testimony proved retaliation against Mehring via numerous adverse employment actions, thus the jury’s substantiated finding that punitive damages were warranted. There is no evidence of passion or prejudice in the verdict nor does the award shock the conscience. Bunch, supra, at 176. There is no basis in law or fact supporting a request that this Court vacate a unanimous jury verdict awarding \$250,000 in punitive damages.

**D. Evidence Was Sufficient To Warrant Mehring's Outrage Claim.**

Appellants' Summary of Argument claims "*The trial court also erroneously allowed the jury to consider an outrage instruction and make an outrage award, in spite of insufficient evidence.*" App.s' Br., p. 20. Notably, Appellants failed to either object to or take exception to the specific jury instructions at issue, Nos. 22-26. RP 2001-2. "*Failure to object to jury instructions waives objection on appeal.*" Valdez-Zontek v. Eastmont School Dist., 154 Wn. App. 147, 165 (Div. III, 2010). "*Instructions to which no exceptions are taken become the law of the case.*" Id. Thus, Instructions Nos. 22-26 are the law of the case. Moreover, Appellants failed to make a CR 50 trial motion to dismiss Mehring's outrage claim. Only after the jury's verdict did Appellants file a motion for judgment NOV. The Trial Court properly denied Appellants' motion. An appellate court reviews a Trial Court's decision denying a motion for a judgment NOV by applying the same standard as the Trial Court. Indus. Indem. Co. of the N.W., Inc. v. Kallevig, supra.

*"The elements of the tort of outrage are extreme and outrageous conduct, intentional or reckless infliction of emotional distress, and resulting severe emotional distress."* Corey v. Pierce County, 154 Wn. App. 752, 763 (2010). "*The court must initially determine if reasonable*

*minds could differ on whether the conduct was sufficiently extreme to result in liability.”* Id. *“Then the determination of whether the conduct is sufficiently outrageous becomes a question for the jury.”* Id. Here, the Trial Court satisfied its obligation to determine if reasonable minds could differ on whether the conduct at issue was sufficiently extreme to result in liability. In response to Appellants’ argument relating to their distribution of Mehring’s highly confidential psychotherapy records, the Court specifically stated, *“I think what’s fair to say is that the plaintiff can say it’s outrageous, might not have violated a statute and an order, but it’s still outrageous, these people didn’t have a need to know this.”* RP 1915. Thereafter, the determination of whether Appellants’ release of medical records was sufficiently outrageous became a question for the jury.

After eight days of testimony and evidence, the jury unanimously found Appellant Kirkpatrick had engaged in intentional infliction of emotional distress/outrage against Mehring. See CP 2707-9, **Appendix D**. Eleven of the twelve Jurors found the Appellant City had likewise engaged in outrage against Mehring. Id. Indeed, the jury heard substantial evidence and testimony that Kirkpatrick engaged in outrageous conduct condoned and/or ratified by Appellant City, including but not limited to the following:

- Without regard to his safety, Kirkpatrick publicly and intentionally ‘outed’ Mehring as an undercover drug enforcement detective thereby subjecting him and his family to potential harm. RP 736, 741-4, 746-7, 824-7, 911-3, 1023-4, 1026-7, 1404-5, 1660.
- Kirkpatrick intentionally forwarded his private, confidential psychotherapy notes via an informal, non-confidential email system to unauthorized members of the police force – his peers. RP 848-9, 1209-11, 1267-9, 1398-1400, 1406-7; Exs. 39, 147.
- Kirkpatrick threatened Mehring’s treating psychologist that City legal was contemplating not renewing her contract for the first time in over twenty-two years due to her involvement in the Mehring litigation. RP 849-54, 1269-75, 1599, 1601; Ex. 139.
- Kirkpatrick created a separate IA finding wherein she determined the charge of “conduct unbecoming” was sustained and thereafter placed the City on notice that the City “*may be subject to a negligent retention lawsuit based on this record*” despite Mehring being cleared of all wrongful conduct through both a criminal trial and Internal Affairs investigation. RP 761-3; Ex. 34.
- Kirkpatrick, in September 2011, announced to all SPD Captains, Lieutenants, and Command Staff in general, that Mehring’s “*mental & emotional status... caused the City enough concern that H.R. determined that paid administrative leave was appropriate.*” RP 540-1, 842-4; Ex. 62.
- Kirkpatrick threatened and attempted to subject Mehring to multiple psychological fitness-for-duty examinations. RP 1072, 1074-8, 1173, 1211-2, 1214-5, 1498-1502, 1510-2, 1503-4; Exs. 64, 74, 77, 179, 180, 183.
- Kirkpatrick, in February 2012, retaliated with an IA investigation against Mehring alleging he was insubordinate as a result of a vacation approval. RP 541-7, 585-7, 844-7, 1078-81, 1484-5; Exs. 86-9, 91, 138.
- Appellants, on 6/30/11, initiated a third IA investigation of Mehring as a direct result of his litigation. Ex. 146.

Additionally, the jury was presented with extensive testimony from Mehring and his doctor detailing the psychological, emotional, and at times physical effects Appellants' actions had upon him. RP 1023-4, 1026-7, 1059-60, 1063-4, 1096-7, 1262-3, 1604-6; Ex. 605.

Notably, the support Appellants' brief purportedly relies upon to attack the outrage claim predominantly cites to closing argument instead of any actual testimony. App.s' Br., pp. 48-9. This Court's prior Order instructed Appellants to support their purported "factual assertions" by citations to the record or to remove them altogether, which they ignored.

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See **Appendix E**–Commissioner Wasson’s Ruling<sup>11</sup>. All Appellants’ citations to the record from RP 2028 forward, are simply to closing argument, which of course, the Trial Court instructed was not evidence. RP 2027; CP 2668-71, **Appendix F** – Court’s Instruction No. 1.

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<sup>11</sup> Appellants failed and/or refused to correct numerous invented citations in direct violation of Commissioner Wasson’s 1/7/13 Ruling and RAP 10.3(a)(3) and (6). “*The remedy provided by RAP 10.7 is to return the brief for corrections or to impose sanctions.*” Lawson v. Boeing Co., 58 Wn. App. 261, 270-71 (Div. I, 1990). Commissioner Wasson specifically held the cited page, RP 999, did not support the following statement “*Based on these reports, SPD Administration opened an Internal Affairs investigation....*” App.s’ Br., p. 7. Yet, Appellants refused to either remove the statement or provide an accurate citation as ordered. In further violation of the Order, Appellants failed to provide accurate and/or actual support for the following creative version of purported facts: “*The case was reviewed by Spokane County Deputy Prosecuting Attorney Mark Lindsey who determined there was sufficient evidence to prove the elements of the charged crime beyond a reasonable doubt*” (p. 8, RP 1779); “*This letter by Chief Kirkpatrick was treated by all as a Loudermill letter*” (p. 10, RP 615); “*In April and May, 2007, Chief Kirkpatrick took steps toward completing the disciplinary action against Detective Mehring*” (p. 10, RP 1366); “*Chief Kirkpatrick did not agree that Detective Mehring could testify under a grant of immunity, which meant that she could not discharge him for insubordination for refusing to answer questions related to the criminal charges*” (p. 10, RP 1366); “*Despite this, the County Prosecutor decided to proceed to trial with a reluctant domestic violence victim*” (p. 11, RP 1373, 1811); “*Which was, of course, all of the evidence against Detective Mehring*” (p. 12, RP 1376); “*Chief Kirkpatrick disagreed; she very much believed that Detective Mehring did exactly what he was charged with, but rather than swim upstream against her officers, she concluded that there was ‘insufficient evidence’ to discipline Detective Mehring for conduct unbecoming a Spokane police officer*” (p. 12, RP 1377); “*When Detective Mehring was paid for his time on unpaid leave status, he was ‘made whole’*” (p. 12, RP 1042, 1166); “*All Civil Service procedures were followed to the letter*” (p. 12, RP 574); “*Detective Mehring was at all times represented by both his private attorney and by the Union*” (p. 12, RP 488); “*It is undisputed that the City (whose Chief of Police was new to the job and whose acting Human Resources Director was new to that role), and the Union simply overlooked the procedure*” (p. 14, RP 617); “*The Deputy Mayor testified that he believed that he would have determined that unpaid leave was proper for an employee charged by an independent prosecutorial agency with a felony*” (p. 14, RP 875); and “*In other words, had the City complied with Administrative Policy 0620-06-34, it would not have made a difference in this case*” (p. 14, RP 875). In light of Appellants’ refusal to comply with this Court’s 1/7/13 Order and RAP 10.3(a)(3) and (6), Mehring hereby respectfully renews his 12/6/12 Motion to Strike pursuant to RAP 10.3 and 10.7.

The Corey, supra, decision is on point and is particularly instructive. In Corey, a jury verdict was upheld with a finding that the “*trial court did not err in denying the judgment as a matter of law on the outrage claim.*” Corey, supra, at 764. In Corey, allegations were made against a longtime public servant asserting the mishandling of public funds thereby engaging in a criminal endeavor. The Court found these allegations to be particularly loathsome and went beyond “*mere insults and indignities....*” Id.

Here, a decorated SPD Detective was falsely accused of felony harassment, arrested, and stripped of his badge; was publicly ‘outed’ as an undercover agent without regard to the safety of him, his fellow officers, or that of his family; was suspended without pay in derogation of due process; was subjected to the false accusations he was unfit for duty; was subjected to several retaliatory IA Investigations; was required to report directly to the Chief for any leave; was harassed with the threat of ongoing psychological exams; and then had his highly confidential psychotherapy notes disseminated to his peers. See Statement of the Case, supra. The jury saw and determined this to be outrageous conduct clearly far beyond “*mere insults and indignities.*” Corey, supra, at 764; CP 2707-9, **Appendix D.**

Appellants' reliance upon Pettis v. State, 98 Wn. App. 553 (1999), likewise offers them no support. In Pettis, the plaintiff relied upon “*conclusory allegations rather than on specific evidence*” to support her claim for outrage. Id. at 564. Unlike in Pettis, Mehring provided the jury here with substantial evidence and testimony illustrating that Kirkpatrick engaged in outrageous conduct, particularly when she publicly outed his undercover status thereby placing him, fellow officers, and his family in danger. RP 894, 912-3, 1023-4. Further, Appellants' reliance upon Deeter v. Safeway Stores, Inc., 50 Wn. App. 67 (Div. I, 1987) is not even remotely relevant to the facts presented here and warrants no discussion. As a matter of fact and law, the Trial Court here committed no error in allowing the jury to decide the claim of outrage.

**E. Lost Overtime.**

Appellants' argument that “*No theory was properly pled in this case under which Detective Mehring's 'lost overtime' claim could have been awarded*” is specious. App.s' Br., p. 50. At the close of testimony, Defendants argued a CR 50 trial motion to preclude any jury deliberations over lost overtime wages Mehring suffered as a result of being removed from the Task Force. RP 1897-1902. The Trial Court denied Appellants' Motion holding the question of damages for lost overtime was “*part of the damages*” Mehring arguably suffered as a result of being denied his

constitutionally-protected right to due process. RP 1902. Appellants ignore that the question of lost overtime damages was never submitted as a separate claim but was argued as damages suffered due to violation of Mehring's constitutional right to due process. "*The issue was if he had been given due process, he would not have been terminated without pay, he would have been in the Task Force, and he would have been entitled to overtime had they not done what they did to him without due process... it goes to the issue of damages.*" Judge O'Connor, RP 1898-99. Appellants' request to have the jury's award of \$45,675 in economic damages stricken must be denied.

**F. The Trial Court Did Not Error In Awarding Attorney Fees.**

*"An attorney fees award under 42 U.S.C. § 1988 is reviewed under an abuse of discretion standard; discretion is abused when its exercise is manifestly unreasonable or based on untenable grounds or reasons."* Parmelee v. O'Neel, 168 Wn.2d 515, 521 (2010). *"In order to reverse an attorney fee award, an appellate court must find the trial court **manifestly** abused its discretion."* Chuong Van Pham v. City of Seattle, 159 Wn.2d 527, 538 (2007) (holding that the trial court did not abuse its discretion in calculating the lodestar amount) (emphasis added). This is so because trial courts are required to *"independently determine what is a reasonable fee."*

Steele v. Lundgren, 96 Wn. App. 773, 780 (1999) review denied, 139 Wn.2d 1026 (2000).

**1. The Trial Court's Approval Of Mehring's Attorney Fees Segregation Was Reasonable And Appropriate.**

Washington follows the “*American Rule*” requiring each party to pay its own attorney fees, unless a statutory or contractual basis exists for the recovery of attorney fees and costs. Rettkowski v. Dept. of Ecology, 128 Wn.2d 508, 514 (1996). Here, 42 U.S.C. § 1983 authorizes an award of reasonable attorney fees to the prevailing party. See 42 U.S.C. § 1988. “*The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances. Accordingly, a prevailing plaintiff should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.*” Ballen v. City of Redmond, 466 F.3d 736, 746 (9<sup>th</sup> Cir., 2006) (quoting Hensley v. Eckerhart, 461 U.S. 424, 429 (1983)). A plaintiff becomes a prevailing party when he succeeds “*on any significant issue in litigation*” which achieves some of the benefit plaintiff sought in bringing suit. Parmelee, supra, at 522 (citing Tx. State Teachers Ass’n v. Garland Indep. School Dist., 489 U.S. 782, 792-2 (1989) (internal quotations omitted)). Attorney fees are granted pursuant to litigation outcome, not whether a plaintiff succeeds on every

claim or motion. Hensley, supra, 433. In Hensley, the U.S. Supreme Court explained that:

*“[i]n some cases a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories. In such a suit, even where the claims are brought against the same defendants...counsel’s work on one claim will be unrelated to his work on another claim. Accordingly, work on an unsuccessful claim cannot be deemed to have been ‘expended in pursuit of the ultimate result achieved.’ The congressional intent to limit awards to prevailing parties requires that these unrelated claims be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim.”*

Id. at 434-35. The case here was not such a suit.

In this matter, Mehring’s claims filed on 12/15/09 were based upon the same course of conduct and the exact same facts commencing on 3/24/07. Thereafter, Mehring’s amended claims for retaliation and hostile work environment were based upon the same course of conduct and the exact same facts commencing on 12/15/09. Mehring’s case is clearly one that involves a “*common core of facts.*” See Brand v. Dept. of L&I of State of Wn., 139 Wn.2d 659, 672-3 (1999) citing Hensley.

As a result, the time Mehring’s counsel spent was “*devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis.*” Id. According to Hensley, such a case as this “*cannot be viewed as a series of discrete claims.*”

Hensley, supra, 435. Instead, the focus here should be “*on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.*” Id. In doing so, the Hensley court at p. 435 advises:

*“[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass **all hours reasonably expended on the litigation**, and indeed in some cases of exceptional success an enhanced award may be justified. ... the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court’s rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.”* (Emphasis added)(citations omitted).

Here, Mehring’s result unequivocally was an exceptional success justifying not only an award encompassing all hours reasonably expended on the litigation but a multiplier as well. Washington Courts follow Hensley in recognizing that attorney fee awards are not required to be reduced when the plaintiff fails to succeed on each claim brought. “*In other cases the plaintiff’s claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel’s time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims.*” Brand v. Dept. of L&I of

State of Wn., 139 Wn.2d 659, 672-3 (1999) citing Hensley. See also Blair v. WSU, 108 Wn.2d 558 (1987) (when parties prevail on any significant issue that is inseparable from issues on which the parties did not prevail, a court may award attorney fees on all issues).

In determining whether attorney fees in a civil rights case should be segregated to exclude time spent on unsuccessful claims, the court in Odima v. Westin Tucson Hotel, 53 F.3d 1484, 1499 (9th Cir., 1995) explained: “[r]elated claims will involve a common core of facts or will be based on related legal theories.... Thus, the test is whether relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury upon which the relief granted is premised.” In Odima, Id., the court found plaintiff’s unsuccessful state tort claims were related to his successful Title VII and § 1981 claims because:

*“all of Odima’s claims arose from a common core of facts – his employment relationship with Westin. To prove the discrimination claims pursuant to Title VII and Section 1981, Odima had to present evidence of his work environment, his relationship with his superiors, his interactions with the Human Resources staff, his efforts to advance and the impact of Westin’s discriminatory practices. Odima’s state tort claims for retaliation, constructive discharge, and wrongful termination required virtually the same evidence.”*

The same is true in this case. Mehring's unsuccessful state tort claims were related to his successful 42 U.S.C. § 1983 claims, because all of his claims arose from a common core of facts – his employment relationship with Appellants. As in Odima, Mehring had to present virtually the same evidence regarding all of the claims he initiated. Here, segregation is legally not required as the successful and unsuccessful claims were related and inter-related. E.g., they sought to remedy the injuries Mehring suffered as a result of the course of conduct Appellants engaged in to terminate his employment without due process.

Mehring succeeded on each of the 11 issues presented to the jury. See CP 2707-9, **Appendix D**. The jury found Appellant City had violated Mehring's constitutional right to procedural due process, Appellants retaliated against him in violation of his First Amendment right, and engaged in the intentional and/or reckless infliction of emotional distress/outrage. Id. Since Mehring unequivocally prevailed at trial he is entitled to an award of reasonable attorney fees and costs under 42 U.S.C. § 1988. CP 2707-9.

In Steele v. Lundgren, *supra*, at 782, the defendant claimed the trial court abused its discretion when it failed to segregate the award of attorney fees between successful and unsuccessful claims. Defendant's argument was based upon the fact that many of plaintiff's claims were

dismissed on summary judgment. Id. at 782-3. However, the appellate court rejected this argument and held the trial court had not abused its discretion in failing to reduce fees because all of plaintiff's claims were overlapping and thus involved "*a common core of facts and related legal theories.*" Id. at 783.

Here, the Trial Court went above and beyond Steele and ordered Mehring to reduce attorney fees for the dismissed claims, despite the fact that all of his claims involved a common core of facts and related legal theories. 1/23/12 RP 129-33; CP 3391-2; CP 3250-65. Thereafter, Mehring segregated his attorneys' fees as evidenced by Judge O'Connor's "*Finding of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Award of Attorney Fees and Costs.*" CP 3255-6. This segregation resulted in a reduction of \$43,995.48 in fees. CP 3392; 1/23/12 RP 112-4. **Appendix G** hereto sets forth Plaintiff's segregation. CP 3407-3513. Ultimately, despite many of the same arguments presented here, the Trial Court found "*[a]dditional segregation was not required, as the case involved two core sets of facts, those supporting Plaintiff's claims and those supporting Defendant's defenses and the claims that proceeded to trial were based upon one or both of these core sets of facts.*" CP 3255.

Here, the Trial Court's award of attorney fees was not a manifest abuse of discretion.

**2. The Trial Court Correctly Found Counsel’s Hourly Rate Reasonable.**

In Washington, when determining the reasonableness of a fee, the factors to be considered include:

*“(1) the time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained... (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent....”*

RPC 1.5(a). Moreover, according to the U.S. Supreme Court, reasonable hourly rates under 42 U.S.C. § 1988, the statute granting attorney fees in 42 U.S.C. § 1983 claims, are to be determined by “*prevailing market rates in the relevant community.*” Perdue v. Kenney A. ex. Rel. Winn, 559 U.S. 542, \* 1672 (2010) (quoting Blum v. Stenson, 465 U.S. 886, 895 (1984)). In this case, the Trial Court found the hourly rate charged by Attorney Dunn – lead counsel for Plaintiff Mehring – was reasonable and consistent with the usual and customary hourly rates charged within the community by attorneys with similar experience, reputation, and ability. Likewise, the rate was found to be reasonable and consistent with those attorneys representing citizens seeking redress for the violation of constitutional

rights as well as those attorneys representing employees and employers regarding employment disputes. CP 3253-60; 1/23/12 RP 139.

Mehring's expert on attorney fees in employment law matters opined, "*The hourly rates requested by Dunn & Black are reasonable given the experience, reputation and ability of the lawyers handling the case. The hourly rates requested are consistent with the rates charged by lawyers with similar experience and expertise in the Spokane area.*" CP 3635, ¶ 14. She further concluded, "*[t]he prevailing rates in the Spokane area for employment and civil rights work performed by lawyers with the skill and expertise exhibited by the lawyers of Dunn & Black is currently \$200 and \$400 per hour.*" *Id.* at p. 6, ¶ 15.

Notably, Appellants' utilization of 9 Foster Pepper Seattle attorneys in defense of this matter confirm the rates charged by Dunn & Black, P.S. are reasonable. Attached hereto as **Appendix H** (CP 3062-4) is a spreadsheet identifying those Seattle attorneys and rates ranging from \$175 to \$395 an hour. CP 3039-3062, ¶ 9; 3062-4. Only one Foster Pepper attorney, charged less than \$200 an hour, \$175, presumably because she graduated in 2011. CP 3062. All other Foster Pepper attorneys billed between \$215 and \$395 an hour, including those graduating in 2005-7. CP 3039-62, ¶ 9; 3062-4. Based on the record, the Trial Court did not engage in a manifest abuse of discretion holding

*“Plaintiff’s attorneys’ rates are consistent with rates of other comparable attorneys in the Spokane area.”* CP 3253.

**3. The Trial Court Correctly Applied A 1.25 Multiplier.**

Washington courts determine a reasonable attorney fee by first calculating the lodestar amount. Clausen v. Icicle Seafoods, Inc., 174 Wn.2d 70, 81 (2012). The lodestar amount is calculated by multiplying the number of hours reasonably expended on the litigation by the reasonable hourly rate. Id. Second, the court considers two factors to determine whether to adjust the lodestar fee: (1) the contingent nature of the case; and (2) the quality of the work performed. Id.

Where a case significantly impacts the lead lawyer’s ability to work on other matters and the case constitutes a significant risk to the firm, a lodestar multiplier is appropriate. Sanders v. State, 169 Wn.2d 827, 869 (2010); Broyles v. Thurston County, 147 Wn. App. 409, 452-3 (2008). As an illustration, in Broyles, three female attorneys formerly employed as deputy prosecutors filed an employment discrimination action against Thurston County. Id. at 415-22. Division II found that a trial court’s application of a 1.5 multiplier was appropriate and not an abuse of discretion where the *“representation significantly impacted the ability of the lead lawyers to work on other matters and constituted a significant risk to plaintiff’s law firm if it did not recover.”* Id. at 453.

There, as here, plaintiff's firm took the case which was unique and complex, requiring a high degree of skill and preparation, on a contingency fee basis. Id.

Furthermore, a multiplier of 1.5 was granted in the case of Carlson v. Lake Chelan Community Hosp., 116 Wn. App. 718 (2003), a wrongful termination case, wherein Division III found based upon the trial court's findings, that plaintiff's counsel took the case on a contingent basis, proceeded at considerable risk, while defense counsel granted no concessions, and did so with no assurance of plaintiff's recovery. 116 Wn. App at 743. The same situation exists here.

Ultimately, Mehring was represented by Dunn & Black, P.S. pursuant to a contingency fee agreement because of his inability to pay hourly fees and costs. CP 3650-8; 1/23/12 RP 141. Despite the uncertainty of pursuing a 42 U.S.C. § 1983 case, Dunn & Black agreed to provide representation on a hybrid contingent fee basis. CP 3639-775. In contrast, Appellants had vast resources at their disposal as indicated by the City Council's agreements to retain private lawyers – Summit Law Group, PLLC, and Foster Pepper, PLLC – for their individual representative roles. 1/23/12 RP 141. As a result, the Trial Court correctly determined that:

*“the following factors: undesirability of the case, the impact of the case on the attorney's practice, the nature of the case subject matter, the fact that Plaintiff was*

*proceeding against a well-represented government entity with substantial resources, the highly contested nature of the case, the fact that there was no assurance of recovery, the complexity of the case, the high quality of representation, the exceptional result obtained, and the substantial time commitment expended by the attorneys justified a multiplier of 1.25 in this case.”*

CP 3257; 1/23/12 RP 142-4. Additionally, this case “*significantly impacted the ability of the lead attorneys to work on other matters... [and] involved complex issues of employment law, Constitutional law, and government liability.*” CP 3257, 2748. The Trial Court here did not abuse its discretion in granting a multiplier of 1.25. The Court carefully considered the contingent nature of the case and quality of the representation in making adjustment to the lodestar fee. 1/23/12 RP 145.

## **VI. RESPONDENT MEHRING’S CROSS-APPEAL**

### **A. Dismissal Of Mehring’s Wrongful Withholding Of Wages Claim Was Error.**

The Trial Court committed reversible error when it granted Appellants’ motion to dismiss Mehring’s wrongful withholding of wages claim at the close of his case in chief. CP 26 – Eleventh Cause of Action. The applicable standard of review requires the appellate court to “*accept as true the nonmoving party’s evidence and draw all favorable inferences that may reasonably be evinced. The motion may be granted only if it can properly be said as a matter of law that there is no evidence or reasonable inference therefrom to sustain a verdict for the nonmoving party.*”

Baldwin v. City of Seattle, 55 Wn. App. 241, 247 (Div. I, 1989) (citations omitted). Here, the evidence was more than sufficient to justify a verdict on Mehring's wage claim.

Washington courts liberally construe the wrongful withholding statute "*to advance the legislature's intent to protect employee wages and assure payment.*" Schilling v. Radio Holdings, Inc., 136 Wn.2d 152, 159 (1998). "*Any employer or officer, vice principal or agent of any employer... who (2) willfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract, ...shall be guilty of a misdemeanor.*" RCW 49.52.050. "*A plaintiff can file a claim under RCW 49.52.070 when he can show a violation of RCW 49.52.050(2), subjecting the violator to twice the amount of wages unlawfully withheld and to attorney fees and costs.*" Durand v. HIMC Corp., 151 Wn. App. 818, 833 (Div. II, 2009).

An allegation of willful failure to pay is rejected only when "*(1) the failure is the result of carelessness or error or (2) when a bona fide dispute exists as to the amount of wages owed or whether there was an employer/employee relationship.*" Id., citing Schilling, at 160. "*An employer's failure to pay wages due is willful if the employer knows what he or she is doing, intends to do it, and is a free agent.*" Id. Here, it is an

uncontroverted fact that Appellants knowingly and willfully withheld wages from Mehring for 569 days when Kirkpatrick intentionally placed him on unpaid leave status in violation of the City of Spokane's "Felony Layoff Policy" and the City's Charter. RP 755-6, 872-4, 1042, 1449, 1451, 1453; Ex. 6. The amount wrongfully withheld, \$127,945.51 in wages, was eventually re-paid to Mehring but only when he was vindicated at the conclusion of his criminal trial. RP 1042; Ex. 35, ¶ 11.

In Mega v. Whitworth College, 138 Wn. App. 661 (Div. III, 2007), this Court similarly held that a tenured professor was entitled to damages due to the college's wrongful withholding of his wages. Id. at 673. The Court found that the professor had been entitled to suspension procedures detailed in the faculty handbook and that the college's failure to follow those procedures due to the incorrect belief that the college's suspension letter complied with their policy, constituted a wrongful withholding of wages pursuant to RCW 49.52.070 upon his separation from the college. Id. at 673.

Here, Appellants likewise admittedly failed to follow their procedures as outlined in their FLP which the Trial Court ruled was conduct in violation of Mehring's procedural due process. RP 868, 872-4, 1449, 1451, 1453. Further, Appellants failed to follow the City's Charter prior to placing Mehring on indefinite unpaid layoff status despite the fact

the Charter only permitted Appellants to place a commissioned employee on unpaid leave for 30 days unless cause, as defined in Civil Service Rule IX, exists. Ex. 6. Here, without question, no such cause existed. Just as the defendant employer in Mega was found to have wrongfully withheld wages as a result of its failure to accord its employee the process he was due, Appellants here also wrongfully withheld wages in failing to accord Mehring his due process.

The Trial Court here erred when it decided as a matter of fact and law that Appellants were not liable for the wrongful and willful withholding of \$127,945.51 of Mehring's wages in violation of RCW 49.52.050. Accordingly, Mehring requests that this Court reverse the Trial Court's dismissal of his wage claim and award him twice the undisputed amount of his withheld wages as damages pursuant to the statute.

**B. Refusal To Name Kirkpatrick On The Judgment Summary Was Error.**

The Trial Court committed further reversible error when it was persuaded by Appellants to remove Kirkpatrick personally from the Judgment Summary. CP 2766-9. The standard of review is de novo review when legal error is at issue. Besides deciding a verdict in favor of Mehring against Appellants in the amount of \$472,676, jointly and severally, the jury in this case also directed a verdict specifically against

Kirkpatrick individually, awarding punitive damages to Mehring in the amount of \$250,000. See Appendix D. Notably, the Special Verdict Form used here was proposed by the Appellants. CP 2707-9. It required the jury to answer four specific questions addressing Kirkpatrick's conduct in this case. See CP 2707-9, Appendix D.

Later, when Mehring presented the Judgment for entry, the Trial Court refused to allow Kirkpatrick to be identified as a Judgment Debtor, thus impermissibly rewriting the jury's findings. Without Kirkpatrick as a named Judgment Debtor, Appellant City could decide not to indemnify her thereby preventing Mehring from collecting the punitive damages awarded against her. The City on 6/28/11, did pass a Resolution Approving Indemnification which specifically provides that "*any judgment rendered against her (Anne Kirkpatrick)..., including punitive damages, will be paid by the City of Spokane or its insurance carriers.*" CP 2751-6. However, even pursuant to these terms, a Judgment is first required to be rendered against Kirkpatrick before any indemnification obligation is triggered. More pointedly, if there is to be an insurance company involved in paying this verdict as suggested in the City's Resolution, an appropriate Judgment against all the parties is required.

*"Neither a trial court nor an Appellate Court may substitute its judgment for that which is within the province of the jury."* Blue Chelan

vs. Dept. of L&I of State of Wash., 101 Wn.2d 512, 515 (1984). The Judgment must accord with the findings. Gilmartin v. Stevens Inv. Co., 43 Wn.2d 289, 298-9 (1953). Further, “[w]hen a special verdict is sought from a jury, the appropriate procedure is for the court to accept the findings of fact explicitly made or implicit in the jury’s answers and, based thereon and on such additional findings as the court may find necessary to make, direct entry of judgment.” Korssjoen, Inc. v. Heiman, 52 Wn. App. 843, 847 (1988).

Kirkpatrick was found personally liable for \$250,000 in punitive damages suffered by Mehring. Accordingly, the Judgment entered in this matter must be consistent with the jury’s verdict and must list Kirkpatrick as a Judgment Debtor. The Trial Court erred by substituting its judgment for the jury’s in refusing to name Kirkpatrick as a Judgment Debtor. Mehring respectfully requests this Court enter an appropriate Judgment naming Kirkpatrick as a Judgment Debtor.

**C. Ordering Use Of An Incorrect Interest Rate Was Reversible Error.**

The Trial Court also erred in contravention of RCW 4.56.110(3)(b) by ordering an incorrect interest rate applicable to the Judgment. The issue of what interest rate is appropriate requires interpretation of the applicable statutes and is a legal question subject to de novo review.

Obviously, Kirkpatrick, individually, is not a public agency. Thus, pursuant to RCW 4.56.110, the appropriate rate of interest applicable to the punitive damages awarded against her is 5.26%. RCW 4.56.110(3)(b) provides “*judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the prime rate....*” Id. The rate of 5.26% was the appropriate rate of interest applicable to the \$250,000 punitive damages award, yet the Court applied a lesser rate. 12/16/11 RP 81-86. Further, as for the remaining \$472,676 in damages, Appellants inexplicably failed to provide for a segregated verdict as between the respective defendants on the Special Verdict Form. Thus, those damages were awarded jointly and severally. In order to accomplish the central goals of 42 U.S.C. § 1983, the highest available interest rate must be utilized. After all, the primary goals of 42 U.S.C. § 1983 are that of make-whole relief and deterrence. See Squires v. Bonser, 54 F.3d 168, 172 (3d. Cir., 1995). Here, the Trial Court used the lowest rate (2.061%) available pursuant to RCW 4.56.110. 12/16/11 RP 81-6. This error contravened the goals underlying 42 U.S.C. § 1983 and ignores the jury’s unanimous verdict finding against Kirkpatrick on all claims, but especially as to the \$250,000 punitive damages award against her personally. In order to ensure justice is served,

the entire verdict amount and Judgment must be corrected to reflect the highest of the two interest rates available (5.26%) pursuant to RCW 4.56.110(3)(b).

**VII. RAP 18.1 MOTION FOR ATTORNEY FEES AND COSTS**

Mehring respectfully requests an award of reasonable attorney fees and costs incurred on appeal. RAP 18.1. A prevailing party under 42 U.S.C. § 1988 may also seek attorney fees and costs on appeal. Democratic Party of Wn. State v. Reed, 388 F.3d 1281, 1284 (9<sup>th</sup> Cir., 2004); see also Ermine v. City of Spokane, 143 Wn.2d 636, 650 (2001). Additionally, Mehring requests an award of post-judgment interest on his award and attorney fees pursuant to RCW 4.56.110(3)(b). See Wn. State Comm'n Access Project v. Regal Cinemas, Inc., 293 P.3d 413, 439 (2013). Mehring also respectfully requests a multiplier of 1.25 on all appellate work undertaken. 42 U.S.C. § 1988 rests on the premise that rewarding attorneys with an enhanced lodestar in “exceptional cases,” such as this, is necessary to achieve a socially desirable level of civil rights victories. Eliminating enhancements when attorneys are subsequently required to defend favorable outcomes on appeal contravenes the multiplier purpose.

### VIII. CONCLUSION

Based upon the foregoing, Respondent Mehring respectfully requests that the jury verdict against Appellants be upheld and affirmed in all respects; that Respondent's fees and costs awarded by the Trial Court be upheld and affirmed; that the Trial Court's dismissal of Respondent Mehring's wrongful withholding of wages claim be reversed and that such undisputed wages – \$127,945.51, as a matter of law, be awarded in twice the amount wrongfully withheld; that the Trial Court's errors in refusing to correctly identify Kirkpatrick as a Judgment Debtor and to apply the appropriate interest rate be reversed and remanded for entry of an Amended Judgment; and for an award of reasonable costs and attorney fees with a multiplier of 1.25 on appeal.

DATED this 18 day of April, 2013.

DUNN & BLACK, P.S.



ROBERT A. DUNN, WSBA #12089  
SUSAN C. NELSON, WSBA #35637  
Attorneys for Respondent/Cross-Appellant  
Mehring

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18 day of April, 2013, I caused to be served a true and correct copy of the foregoing document to the following:

|                                     |                  |                              |
|-------------------------------------|------------------|------------------------------|
| <input checked="" type="checkbox"/> | HAND DELIVERY    | Milton G. Rowland            |
| <input type="checkbox"/>            | U.S. MAIL        | Foster Pepper, PLLC          |
| <input type="checkbox"/>            | OVERNIGHT MAIL   | 422 W. Riverside, Suite 1310 |
| <input type="checkbox"/>            | FAX TRANSMISSION | Spokane, WA 99201            |
| <input type="checkbox"/>            | EMAIL            |                              |

|                                     |                  |                       |
|-------------------------------------|------------------|-----------------------|
| <input checked="" type="checkbox"/> | HAND DELIVERY    | Carl E. Hueber        |
| <input type="checkbox"/>            | U.S. MAIL        | Winston & Cashatt     |
| <input type="checkbox"/>            | OVERNIGHT MAIL   | 601 W. Riverside Ave. |
| <input type="checkbox"/>            | FAX TRANSMISSION | Suite 1900            |
| <input type="checkbox"/>            | EMAIL            | Spokane, WA 99201     |

  
\_\_\_\_\_  
SUSAN C. NELSON

# APPENDIX A

|  |                                 |
|--|---------------------------------|
| CITY OF SPOKANE<br>ADMINISTRATIVE POLICY AND PROCEDURE | ADMIN 0620-06-34<br>LGL 2006-21 |
| TITLE: LAYOFF OF EMPLOYEES CHARGED WITH A FELONY       |                                 |
| EFFECTIVE DATE: November 28, 1992                      |                                 |
| REVISION EFFECTIVE DATE: April 25, 2006                |                                 |

1.0 GENERAL

1.1 Civil Service Rule IX, Section 6(d) provides that any employee who has been formally charged with a felony may be laid off without pay pending court trial determination. This document spells out the City's policy on the implementation of that rule and the procedure to be followed after the City learns that an employee has been formally charged with a felony.

1.2 TABLE OF CONTENTS

- 1.0 GENERAL
- 2.0 DEPARTMENTS/DIVISIONS AFFECTED
- 3.0 REFERENCES
- 4.0 DEFINITIONS
- 5.0 POLICY
- 6.0 PROCEDURE
- 7.0 RESPONSIBILITIES
- 8.0 APPENDICES

2.0 DEPARTMENTS/DIVISIONS AFFECTED

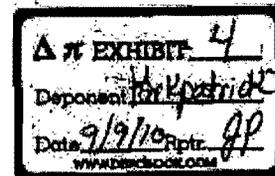
This policy shall apply to all City divisions and departments.

3.0 REFERENCES

Civil Service Rule IX, Section 6(d)

4.0 DEFINITIONS

None



## 5.0 POLICY

- 5.1 It is the policy of the City of Spokane that an employee who has been formally charged with a felony will be laid off pending court trial determination only if the alleged crime is so heinous as to offend the sensibilities of a reasonable person, there is a job connection, the City's public relations would be adversely affected by retaining the employee on the job, or the employee's presence on the job would be a disruptive factor in the work force.

## 6.0 PROCEDURE

- 6.1 When it comes to the City's attention that an employee has been formally charged with a felony, the Human Resources Department shall verify that charge with the appropriate prosecutor's office.
- 6.2 If the charge is verified, the Human Resources Department shall convene an ad-hoc committee composed of the employee's department head or designee, one person from the Human Resources Department, and (if the employee is in a bargaining unit) one person from the bargaining unit. The ad-hoc committee shall review the charge and determine whether it would be a violation of this policy to retain the employee in the job pending court trial determination. The employee, if not incarcerated, may make a presentation at the meeting of the ad-hoc committee if the employee desires. The committee shall reduce its recommendation in writing and submit them to the Human Resources Director, Deputy Mayor and the affected employee.
- 6.3 The Human Resources Director shall provide information on the charge and the ad-hoc committee's recommendations to the Deputy Mayor who will make the decision as to whether to lay the employee off pending court trial determination.
- 6.4 The Human Resources Director and Deputy Mayor may temporarily reassign an employee to other duties if it would be in the best interest of the City pending court trial determination.

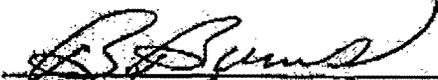
## 7.0 RESPONSIBILITIES

The Human Resources Department shall administer this policy.

8.0 APPENDICES

None

APPROVED BY:

  
\_\_\_\_\_  
City Attorney (193.51)

  
\_\_\_\_\_  
Deputy Mayor

  
\_\_\_\_\_  
Director

4/10/06  
\_\_\_\_\_  
Date

SPOKANE CO. NO. #09-2-05647-6

Mehring vs. City of Spokane

P-8

Disposition: \_\_\_\_\_

# APPENDIX B

MERIT SYSTEM RULES  
OF THE  
CIVIL SERVICE COMMISSION  
CITY OF SPOKANE

State of Washington

As Adopted December 17, 2002

Last amended July 20, 2004

COMMISSIONERS  
John Morey Maurice  
Gerald Saling  
Mary Doran  
Carol Lawton  
Robert C. Van Leuven

## RULE IX SUSPENSION, DISCHARGE, LAY OFF

REFERENCE: CHARTER, SEC. 53(f) AND SEC. 55.

**Section 1. GENERAL:** An employee in the classified service may be suspended, demoted, or discharged for disciplinary purposes by the Mayor. Notice thereof, together with a full statement of the reasons, shall be immediately filed with the Commission through the Human Resources Director who shall also serve a copy upon the employee to include notice of appeal rights. **PROVIDED:** No employee may be disciplined twice for the same act.

**Section 2. APPEAL:** Any employee disciplined under this Rule shall have the right of appeal under the procedures prescribed in Rule XI.

**Section 3. HEARING:** The Commission shall conduct hearings as provided in Rule XI. The Commission may sustain the disciplinary order or may order the employee reinstated.

**Section 4. CONDITIONS:** Employees may be suspended or discharged under the following conditions:

(a) Any employee may be suspended for a period of not more than sixty days for cause and with loss of salary.

(b) Any employee may be permanently discharged from the service for cause.

**Section 5. CAUSE:** Merit principles of employment shall be the primary consideration in any disciplinary action. Employees may be disciplined only for actions which would affect their ability or fitness to satisfactorily perform their assigned duties. Non-merit factors such as race, creed, color, affiliation, national origin, sex, sexual orientation, age, marital status, or the presence of any physical or mental disability may not be considered. The following conditions are compatible to the principles of merit and may be considered as cause for any classified employee to be suspended, discharged or otherwise disciplined.

(a) Has been absent from duty without approved official leave contrary to the Civil Service rules or the City personnel regulations, or has failed to report after any such leave has been officially disapproved or revoked;

(b) Has willfully or corruptly, alone or in cooperation with one or more persons, defeated, deceived or obstructed any person in respect to their right of examination; or has willfully or corruptly furnished to any person so examined any special or secret information for the purpose of either improving or injuring the prospects or chances of persons so examined, or to be examined, being examined, employed or promoted in the operation of the Civil Service and Personnel programs of the City;

(c) Is incompetent or inefficient in the performance of the duties and responsibilities of the position held;

(d) Is willfully careless or negligent of the property of the City;

(e) Any willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisor, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City;

(f) Has been guilty of conduct unbecoming an officer or employee of the City;

(g) While on duty, if an officer or an employee has aided in any manner in soliciting or collecting money from an officer or employee of the City for any purpose prohibited by the Mayor; provided, contributions solicited for approved purposes must be voluntary and no discrimination shall be permitted against an employee engaged in such acts;

(h) Has engaged, while in uniform or on duty, in the solicitation of funds or sale of tickets for any purpose except as provided in (g) above;

(i) Has used or threatened to use or attempted to use political influence in securing promotion, leave of absence, transfer, change of grade, pay, or character of work;

(j) Political activity as follows is prohibited:

(1) While fulfilling the duties of City employment to actively engage in a political campaign for Mayor, City Council or other elective City office.

(2) While fulfilling the duties of City employment to take an active part in securing or contributing monies toward the election of any candidate for elective City office.

(3) Use of City position, office, facilities or public resources to attempt to persuade any other employee or other person to participate in or contribute to any political campaign, for Mayor, City Council, or other elective City office.

Nothing contained herein shall prohibit an employee from exercising voting rights, and expressing opinions on all political subjects, nor prohibit the officers of employee associations from soliciting dues or contributions from members of their associations.

(k) Political activity of employees of the City whose positions are financed in total or primarily by Federal grant-in-aid funds, shall also be regulated by the rules and regulations of the Federal Civil Service. A violation of such rules shall be cause for discipline under these rules.

(l) Has been convicted of a felony or a gross misdemeanor;

(m) Excessive absenteeism or habitual pattern of failure to report for duty on time without good and sufficient reason;

(n) Has committed, or has induced or has attempted to induce an officer or employee of the City, to commit an unlawful act or to act in violation of any reasonable and lawful departmental or official regulation or order, or has taken any fee, gift or other valuable thing in the course of work or in connection with it, for personal use from any citizen, when such gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens;

(o) Has beneficial interest, directly or indirectly, in any contract, sale, lease or purchase with or for use of the City; or accepts, directly or indirectly, any compensation, gratuity or reward from any person beneficially interested therein.

**Section 6. LAY OFF:** Whenever it becomes necessary in any department, through lack of work or funds, abolishment of the job, or other good cause to reduce the work force in that department, or for re-employment or extended leave of absence as provided in Rule X, Section 3 and 4 (d); personnel shall be laid off or reduced in grade according to the procedures established in this Rule.

(a) Reductions in force shall be confined to the department affected; except that employees who have been promoted or transferred to their present classification directly from a classification in another department may be returned to such previously held classification in the other department. No classified employee shall be laid off or reduced in grade under these conditions while there are employees not within the classified service who are serving in the same department in the same relative job or classification. For the purpose of this rule, "classified employee" includes both permanent and probationary appointees.

(b) Classification seniority tenure shall be the primary factor in determining a reduction in force, should this tenure be the same, then, in order, shall be considered the departmental seniority and the City seniority. The Commission may grant permission for lay off out of the regular order upon showing by the department head in writing through the Human Resources Director of a necessity in the interest of efficient operation of the department, after giving the employee affected an opportunity for a hearing.

(c) At the time of lay off, permanent and promotional probationary employees shall, at their option, be reduced to the next lower classification within the department, or they may be transferred as provided in Rule VIII; provided such reduction or transfer shall not displace an employee with greater seniority; and provided further, that such reduction or transfer is to a classification in which the employee previously held status, or a classification in which a vacancy exists and for which the character and standards are similar or related to those required in the employee's present classification. Seniority in this instance shall be determined by combining time spent in present classification and time served in classification to which reduction or transfer is contemplated.

(d) Any employee who has been formally charged with a felony may be laid off without pay pending court trial determination. In this instance normal lay off and reinstatement procedures will not apply; however, the appointing officer shall notify the employee

and process the necessary records and forms. If the employee is found not guilty of the charge, the employee shall be immediately restored to duty and shall be entitled to all back salary, and benefits due. In other instances the Mayor shall immediately make a determination as to restoration to duty and of pay.

**Section 7. LAY OFF PROCEDURE:** The person with the least seniority in the classification within a department shall be the first laid off or reduced except that this provision shall not apply in the event lay off action is taken in connection with an extended leave of absence in accordance with Rule X, Sec. 4 (d). The appointing officer shall notify the affected employee in writing a minimum of 10 working days prior to the effective date, prepare the order of change with copies to the Commission and the Human Resources Director on a form provided and shall obtain the approval of the Commission prior to the effective date of such order.

**Section 8. REINSTATEMENT:** The names of persons laid off or reduced in accordance with Section 6 (a-c), shall be placed on a laid off register, to be prepared jointly by the Commission and the Human Resources Director, with copies for both, in the inverse order of lay off; that is, the last person laid off shall be the number one person on the lay off register. Persons on the lay off register shall be given preference over all others in certification and appointment as set out in Rule V, Section 3, and Rule VI, Section 12. The names of such persons shall also be placed at the top of the Citywide promotion or open eligible list for that classification and grade in which they were employed at the time of lay off. If no eligible list exists, the names of such employees shall constitute the eligible list. In order to facilitate reinstatement, the names of such persons may also be placed on transfer lists to other classifications at the same or lower grade level to be certified as transfer requests in accordance with Rule V, Section 3, provided that the persons meet the qualifications for such other classifications. For employees who have been reduced in grade and are employed by the City, there is no limit to the duration of a laid off list; however, those hired from the laid off list after three years from the date placed thereon shall be required to serve a six-month probationary period. For employees separated from service due to layoff, there is a three-year limit to the length of time a name may be on the laid off list. All employees hired in a department other than from which they were laid off shall be required to serve a six-month probationary period.

**Section 9. REINSTATEMENT PROCEDURE:** Upon receipt of a requisition from a department or division, names will be certified from the laid off register in accordance with Rule V, Section 3, and Rule VI, Section 12. The appointing officer shall have no choice in the appointment, and shall appoint the person so certified within 10 days of the certification. If for good and sufficient reason the appointment is not made within 10 days, the appointing officer shall so notify the Commission in writing through the Human Resources Director with reasons. Upon acceptance of such notice, the Commission shall withdraw the certification and the position shall be declared vacant and not to be filled until such time as the appointing officer again requests certification.

**Section 10. TEMPORARY INTERRUPTION:** Any interruption of employment not in excess of 15 calendar days because of adverse weather conditions, shortage of materials or equipment, or for other unexpected or unusual reasons during which employees receive no pay, wages or salary, shall not be considered a lay off.

# APPENDIX C

# Leadership and Discipline

Northwest Command College  
March 13, 2008

Anne E. Kirkpatrick  
Spokane Chief of Police



## Road Map

### Part I

- Why Leadership matters in the discipline process
- Workplace Expectations
- Managing the Grey
- Non-Negotiable Boundaries

### Part II

- Negligence
- Right to Privacy

### Part III

- Particularly Difficult Discipline cases

### Part IV

- Due Process



## Part I

- Leadership: What is it?
- Why does it matter?
- Good Traits
- Bad Traits
- Workplace Expectations
- Managing the Grey
- Non-Negotiable



## What is Leadership?

*Without true followers there is no true Leadership.*

Look over your shoulder and see if anyone is standing there. If not, you're just the Chief of Police.



## Worthy to Follow?

Why it matters

There are two main areas in Leadership where you will be most judged worthy to follow:

One- Who you Promote

Two- How you discipline

- Fair-minded
- competent



## Traits of Good Leadership

- Credible (competent/cheap talker/believable/I'm not a barker but I am a biter)
- Vision (you don't need a leader is you're not going anywhere-managing the status quo is not leadership/do you have a vision about discipline?-a right and tight ship)
- Positional authority vs. Reverential Authority (people follow people not position/you have stars for a reason-know when to throw them)
- Trust (it's all in the relationship)



## Good Traits continued

- Decisive (make one)
  - Courageous (it sucks to be you today)
  - Consistent and Predictable (5 cardinal rules)
  - Ability to manage the Grey (equal principle/unequal results)
  - Fair-Minded (hard vs. harsh)
  - Likeability vs. Respectability (don't confuse the two/there are many people I enjoy and want to have dinner with but I wouldn't buy a used car from them)
  - Integrity (wholeness, sameness/no shadows or landmines)
- 

## Poor Traits that undermine effective Discipline

### The Friend

- ✓ Inability to regulate behavior
- ✓ Supervisory decision based on favoritism
- ✓ Difficult to make tough decision

### The Non-decision-maker

- ✓ Slow decision making leads to low morale

### The Ostrich

- ✓ Avoids conflict
- ✓ Short term problems become chronic long standing problems
- ✓ Negligent supervisory risk

### The Confidant

- ✓ So friendly with staff hard to remain objective
- ✓ May hear "too much" information and become conflicted

### The Egoist

- ✓ Unlikely to tell an employee the real reason for termination, etc.
  - ✓ High risk liability
- 

## Workplace Expectations

- Say what you mean and mean what you say
- Do your work
- Treat each other with respect
- Be reasonable in your decision-making  
(the Dork Rule)
- I will not juggle personalities
- We are in the business of regulating other peoples behavior – regulate your own



## Managing the Grey

Equal application of principles that yield unequal results.

Compromise of officer safety will yield a suspension, but for how long depends on the circumstances.



## 5 Cardinal Rules

### Non-Negotiable

1. No bullying or discrimination
2. You lie you die
3. No abuse of authority
4. No insubordination
5. No conduct unbecoming *that would lead to lack of public's trust in agency*

## Part II

### Theories of Negligence

### Right to Privacy

## Why know the legalities?

You are most likely to be challenged in your discipline decisions. You will lose some arbitrations, but if you are overturned because you do not know what you are doing, then you fail the competency test and being competent is a threshold criteria for being judged worthy to follow.

Being overturned makes you look weak!



## Negligence

A person has a duty towards another person;

The person breaches that duty; AND

The breach causes the injury to the person or property

*"If it's predictable it's preventable!" Gordy Graham.*



## Respondent Superior

An employer is liable for the harmful acts committed by an employee where the employee was *"acting within the scope of his/her employment"*



### Duty in Hiring/Training/Supervising/Retention

#### Hiring

1. Psychological Testing (Brame)
2. Background Checks (Domestic Violence)  
Carlson v. Wackerhut Corp., 3 Wash. App. 247 (1994)

#### Duty in Training

1. Give a tool, train on the tool (tasers)
2. Train on Policy (HR/LF/NDT)

*"I was never trained to drive on wet grass"*



## Duty continued:

### Supervision / Retention

Elements basically the same:

1. The employee presented a risk to others
2. The employer knew, or in the exercise of reasonable care, should have known, that the employee presented such a risk;
3. The employer's failure to adequately supervise the employee proximately caused the plaintiff's injury

*Niece v. Elmview Group Home*, 131 Wn2d 39, 51, 929 P.2d 420 (1997)



## The Right to Privacy

The right to be left alone arises out of the constitutional protection of privacy. The United States Constitution does not explicitly contain a right to privacy provision. The body of law has grown out of the Supreme Court abortion cases. A right of privacy is inferred from a combination of the First, Fourth, Fifth and Ninth Amendment.



## The Right to Privacy

- Financial Matters
  - Medical Records
  - Drug Testing
  - Disciplinary Records
  - Personal Addresses and Telephone Numbers
  - Lockers, Desks, Offices, Phone Records, E-mail
  - Time while on sick Leave
  - Personal Appearance
  - Off-duty Employment
- 

## Financial Matters

The basis for the compelled disclosure of financial matters is to deter corruption and dishonesty in the workplace.

- Pre-employment credit checks
- Assignments to special task forces
  - organized crime
  - narcotics

Barry v. City of New York 712 F.2d 1554 (2<sup>nd</sup> Cir. 1983)



## Medical records

### General Rule

A law enforcement agency may compel the disclosure of medical records if it can show a direct relationship to the officer's physical or psychological ability to perform the job.

Redmond v. City of Overland Park, 872 F.Supp 473 (D.Kan. 1987)

An officer was ordered to go for a Fitness-for Duty exam with a psychologist. The officer sued for violation of privacy, because the psychologist required her to disclose personal medical information from her private doctor. Court ruled in favor of the department.

- The medical records must be kept in a limited-access file.



## HIPAA

### The Health Insurance Portability and Accountability Act

Intended to protect confidentiality of medical information. It was not intended to preclude employers from receiving legitimate medical information about applicants or employees with fitness-for-duty.

Thompson v. City of Arlington, 2 AD cases 1756 (N.D. Tex. 1993): A police officer was suffering from depression. She was able to continue to work while taking medication and going to counseling. She relapsed. In order to bring her back, the City sought her medical records. She made an ADA claim and HIPAA challenge. The City prevailed.

Note: Depression is not a disability under ADA.



## Drug Use

- It is not a medical exam
- As a general rule, a reasonable suspicion standard is more easily justifiable than random testing.
- Policies requiring employees to inform the employer of ALL prescription drugs is overly broad. The policy should require disclosure *if the prescription drug would interfere with the employee's ability to safely perform the job.*

## Discipline Records

### General Rule

Personnel files may be exempt from disclosure

- Where no misconduct exists

If misconduct is found to have occurred, the documents relating to the misconduct are considered public.

- An employee must be notified in advance of disclosure, but the burden is on the employee to seek a protective order prohibiting release.

## Personal Addresses/Phone numbers

The courts have been receptive to arguments that the home addresses and phone numbers of law enforcement officers are protected. *However, the names of law enforcement officers are generally not protected.*

- Rate my Cop
- Voting Records
- Property Records

## Internet Use, E-Mail and Work cell phones

There is no privacy in these records! If you use your personal computer to do work at home, you have no privacy in your personal computer. Same is true if you use your phone for both personal and business needs. Need clear policy about use.

## Offices, Lockers, Desks

### General Rule

The right to privacy turns on whether there is a reasonable expectation of privacy. An employer can easily diminish the expectation by explicitly stating such in policy. Without a policy the courts will look at whether an officer has created a reasonable expectation of privacy. Such as having a lock on your locker, a door on the office that is locked every night versus a cubicle, or a desk you never lock.



## Sick Leave

### General Rule

The employer has a right to make sure that sick leave is not abused. The employer may restrict the to his /her home and activities while at home sick, such as travel. However, you cannot restrict them from attendance at church, to vote, or to see a doctor.

Do not put an officer under surveillance.



## Personal Appearance

Kelly v. Johnson, 425 U.S. 238 (1976): upheld an agency's right to impose grooming standards – not on privacy grounds, but on *esprit de corps* and as long as it is not *arbitrary*.

- It is a mandatory subject of bargaining
- Beards, tattoos, corn-rows, Rastafarian Religion Dread Locks – all held okay in Detroit and New York



## Off-Duty Employment

### General Rule

The agency has the right to regulate off-duty work. They have the right to be sure that the second job does not pose a conflict of interest or so burdensome that it makes the officer's primary job suffer and that the second job does not bring discredit to the agency.

### 4 exceptions:

1. No policy, no regulating
2. Employer has burden to distinguish why some work is banned and others are not (industries L.E. regulate such as alcohol establishments and adult entertainment)
3. Cannot infringe on free speech (expert witness)
4. Condition that secondary employer assume all costs of workers compensation and tort insurance. The courts rationale is that when officer takes L.E. action on behalf of 3<sup>rd</sup> party, L.E. Agency benefits.



SPOKANE CO. NO. #09-2-05647-6

Mehring vs. City of Spokane

**P-39**

Disposition: \_\_\_\_\_

# APPENDIX D



3. Did the Defendant City of Spokane violate Plaintiff's right to due process by actions taken after March 30, 2007?

YES yes NO \_\_\_\_\_

If you answered "no" to this question, please go to question 5. If you answered "yes" to this question, please answer question 4.

4. Did such violation proximately cause Plaintiff to sustain damages?

YES yes NO \_\_\_\_\_

Please proceed to the next question.

5. Did Defendant City of Spokane commit intentional or reckless infliction of emotional distress or outrage?

YES yes NO \_\_\_\_\_

Please proceed to the next question.

6. Did Defendant Anne Kirkpatrick commit intentional or reckless infliction of emotional distress or outrage?

YES yes NO \_\_\_\_\_

If you answered "no" to both questions 5 and 6, please move on to question 8. If you answered "yes" to either question 5 or 6, please continue with the following question.

7. Was the intentional or reckless infliction of emotional distress or outrage by either Defendant City of Spokane or Defendant Anne Kirkpatrick a proximate cause of emotional distress sustained by Plaintiff?

YES yes NO \_\_\_\_\_

Please proceed to the next question.

8. Did the Defendant City of Spokane retaliate against Plaintiff for filing a lawsuit against it in December 2009?

YES yes NO \_\_\_\_\_

Please proceed to the next question.

9. Did the Defendant Anne Kirkpatrick retaliate against Plaintiff for filing a lawsuit against her in December 2009?

YES yes NO \_\_\_\_\_

If you answered "Yes" to either Question 8 or Question 9, please answer question 10. If you answered "No" to both Questions, please proceed to Question 11.

10. Did retaliation by either the City of Spokane or Anne Kirkpatrick proximately cause plaintiff to sustain damages?

YES yes NO \_\_\_\_\_

11. Please set forth the amount of plaintiff's damages, as determined by you:

- a. Economic damages \$ 45,675.00
- b. Non-economic damages \$ 427,000.00
- c. Nominal damages: \$ 1.00
- d. Punitive damages: \$ 250,000.00

Sign and date this verdict form, and give it to the judicial assistant.

Signed:

Michelle Fuller  
Presiding juror

Date: 11-4-11

# APPENDIX E

The Court of Appeals

of the

State of Washington

Division III

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JAN 08 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

DUNN & BLACK

JAY P. MEHRING, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 CITY OF SPOKANE, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

No. 30514-7-III

COMMISSIONER'S RULING

The City has appealed the Spokane County Superior Court's November 21, 2011 judgment on a jury verdict in favor of Jay P. Mehring. Mr. Mehring now moves to strike the City's brief, based on the following arguments:

**A. The Brief does not Comply with RAP 10.3 and 10.4.**

(1) *Certain of the City's Citations to the Record do not Support the Factual Assertions in the City's Brief.* (The respondent has highlighted those citations in the brief in yellow.)

(a) "[T]he Mehrings had an explosive public argument . . . (RP 992-94)" Brief at 7. This Court finds that the cited pages support the statement.

- (b) “After the wrestling match, Lisa Mehring left with her young sons who were also very upset. (RP 1352)” Brief at 7. The cited page does not support this statement.
- (c) “Later that evening, Lisa Mehring talked with a family friend, SPD Sergeant Troy Teigen. (RP 1349) Lisa told him that she had gotten into an argument with her husband, that Detective Mehring was extremely angry and had threatened “to destroy” her and said that he would “burn her down” or “burn the house down with her and the kids in it. (RP 1349)” Brief at 7.

“On March 26, 2007, another family friend, SPD Sergeant David Overhoff, ran into Detective Mehring and his sons at a gym. (RP 1349) Detective Mehring was again extremely angry, and stated to Sergeant Overhoff that ‘I’m going to burn that bitch and her house to the ground. . . . I’m going to destroy that bitch and everything she owns’ and ‘I have nothing to lose and a piece of paper isn’t going to stop me either.’ (RP 1349)” Brief at 7.

“Both Sergeant Overhoff and Sergeant Tiegen documented their contacts with the Mehrings in separate memos to their superiors. (RP 1349)” Brief at 7.

The cited page does not support these statements.

- (d) “Based on these reports, SPD Administration opened an Internal Affairs investigation into the situation. (RP 999)” Brief at 7. The cited page does not support that statement.
- (e) The respondents have highlighted additional material in yellow at pages 8, 9, 11, 12, 13, 14, 15, 17 of the appellant’s opening brief.

Given the fact that a review of the citations on page 7 of the brief, as set forth above, bear out the respondent’s argument, this Court directs the appellant to check its citations and, if they are not accurate, to either remove the statements or provide accurate

citations for them. The appellant shall do the same for the statements identified in (a) through (d).

(2) *Certain Factual Statements in the City's Brief are not Supported with any Citation to the Record.* (The respondent has highlighted in green those statements in the City's brief.)

The City shall either provide a correct citation from the record, or remove from its brief, the statements highlighted in green at pages 7-17, 23-25, 28-29, 31, 38-40, 43-44, 47-49, 52, and 54.

**B. The Brief does not Comply with RAP 10.3.** (The respondent has highlighted unsupported argument in orange.)

This Court has reviewed the material highlighted in orange and concludes that they constitute argument based on the case it cites in a preceding statement. If the respondent disagrees with the City's interpretation of the case, it can do so in the argument portion of its respondent's brief.

**C. The Brief does not Identify the Standard of Review.**

While an appellate brief, as a matter of good practice, should identify the standard of review, the respondent has not cited any case or rule that requires such. Nor is this Court aware of any.

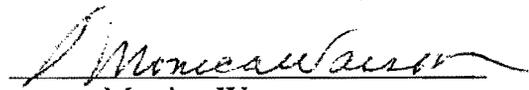
**D. The Respondent asks this Court to Impose Sanctions against the City for its Violation of RAP 10.3 and 10.4**

This Court declines to award sanctions at this time.

No. 30514-7-III

Accordingly, IT IS ORDERED, the respondent's motion to strike the brief in its entirety is denied. However, the Court shall return the appellant's brief to the appellant with a copy of this ruling and direct the appellant to take the steps set forth in this ruling. The appellant shall refile its amended brief within 10 days from the date of this ruling.

January 7, 2013

  
Monica Wasson  
Commissioner

# APPENDIX F

**FILED**  
NOV 07 2011  
THOMAS R. FANQUIST  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SPOKANE COUNTY

JAY P. MEHRING, a single person, )  
)  
)  
Plaintiff, )  
)  
vs. )  
)  
CITY OF SPOKANE, a municipal corporation )  
in and for the State of Washington; ANNE )  
KIRKPATRICK, a single person. )  
)  
Defendants, )

NO. 09-2-05647-6

---

COURT'S INSTRUCTIONS TO THE JURY

---

November 3, 2011

  
\_\_\_\_\_  
Judge Kathleen M. O'Connor

Instruction No. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law as I explain it to you, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

In order to decide whether any party's claim has been proved, you must consider all of the evidence that I have admitted that relates to that claim. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of the witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the

issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

The law does not permit me to comment on the evidence in any way. I would be commenting on the evidence if I indicated my personal opinion about the value of testimony or other evidence. Although I have not intentionally done so, if it appears to you that I have indicated my personal opinion, either during trial or in giving these instructions, you must disregard it entirely.

As to the comments of the lawyers during this trial, they are intended to help you understand the evidence and apply the law. However, it is important for you to remember that the lawyers' remarks, statements, and arguments are not evidence. You should disregard any remark, statement, or argument that is not supported by the evidence or the law as I have explained it to you.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

As jurors, you have a duty to consult with one another and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In the course of your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon the evidence. You should not surrender your honest convictions about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, bias, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Finally, the order of these instructions has no significance as to their relative importance. They are all equally important. In closing arguments, the lawyers may properly discuss specific instructions, but you must not attach any special significance to a particular instruction that they may discuss. During your deliberations, you must consider the instructions as a whole.

# APPENDIX G

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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JAY P. MEHRING, a single person, )

Plaintiff, )

v. )

CITY OF SPOKANE, a municipal )  
corporation in and for the State of )  
Washington; ANNE KIRKPATRICK, a )  
single person, )

Defendants. )

NO. 09-2-05647-6

**DECLARATION OF SUSAN C.  
NELSON IN SUPPORT OF AMENDED  
FEE PETITION**

I, SUSAN C. NELSON, make this Declaration under penalty of perjury under the laws of the State of Washington:

1. I am one of the attorneys of record for Plaintiff Jay P. Mehring. I am over the age of 18, have personal knowledge of and am competent to testify with regard to the matters contained herein.

2. Following the hearing of December 20, 2011, Plaintiff's counsel re-reviewed all of their billing records for the purpose of identifying and segregating out,

1 to the fullest extent possible, any and all time entries and/or costs relating or pertaining  
2 to work performed on claims dismissed from the **Complaint** by this Court.

3  
4 3. Attached hereto as **Exhibit A** is a true and correct copy of an Excel  
5 spreadsheet for **2009**, prepared by myself and Robert Dunn which lists by date, entries  
6 of billable work that Plaintiff's counsel have identified pertaining or relating to such  
7 claims. As to certain of these entries, it was not possible to discern with a degree of  
8 specificity the exact amount of time spent on matters that were ultimately dismissed.  
9 This is because many entries reflect research and work efforts that are integrally  
10 intertwined with claims that were successfully tried and, thus, remain billable.  
11 Accordingly, those specific billable entries for **2009** which cannot be totally segregated  
12 out are identified and listed in **Exhibit A** at a proposed discount of 50%. This has  
13 resulted in Plaintiff deducting \$4,676.85 in attorney and staff billable fees from its fee  
14 petition. For ease of reference, attached hereto as **Exhibit B** is a true and correct copy  
15 of Dunn & Black's original **2009** billing statement with the proposed discounted entries  
16 highlighted.  
17  
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19

20 4. Plaintiff's original fee petition filed herein sought a total of \$16,395 for  
21 attorney and staff time billed in **2009**. Based upon the attached segregation, the amount  
22 of Plaintiff's **Amended Fee Petition** has been reduced to a request for **\$11,718.15** in  
23 fees.  
24  
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DECLARATION OF SUSAN C. NELSON - 2

DUNN & BLACK  
LAWYERS  
A PROFESSIONAL SERVICE CORPORATION  
BANNER BANK BUILDING  
111 NORTH POST, SUITE 300  
SPOKANE, WASHINGTON 99201-0705  
VOICE: (509) 455-8777 • FAX: (509) 455-8722

1           5. Attached hereto as **Exhibit C** is a true and correct copy of an Excel  
2 spreadsheet for **2010** identifying by date the entries of billable work that Plaintiff's  
3 counsel have identified as pertaining to claims this Court dismissed from the  
4 **Complaint**. Likewise, as to certain of these entries, it was not possible to discern and  
5 segregate out with a degree of specificity the exact amount of time spent on matters that  
6 were ultimately dismissed. This is because many entries reflect research and work  
7 efforts that were integrally intertwined with claims that were ultimately tried to a  
8 successful conclusion. Accordingly, these specific billable entries for **2010** which  
9 cannot be totally segregated out are identified and listed in **Exhibit C** at a proposed  
10 discount of 50%. This has resulted in Plaintiff deducting \$19,762.25 in attorney and  
11 staff billable fees on those entries. Attached hereto as **Exhibit D** is a true and correct  
12 copy of Dunn & Black's **2010** billing statement with the specific proposed discounted  
13 billing entries highlighted.

14           6. Plaintiff's original fee request sought a total of \$139,787 for attorney and  
15 staff time billed in **2010**. Based upon the attached segregation, the amount of Plaintiff's  
16 **Amended Fee Petition** has been reduced to a request for **\$120,024.75** in fees.

17           7. Attached hereto as **Exhibit E** is a true and correct copy of an Excel  
18 spreadsheet for **2011** identifying by date entries of billable work Plaintiff's counsel have  
19 identified as pertaining to claims this Court dismissed from the **Complaint** and the  
20 **Amended Complaint**. Again as to certain entries, it was not possible to discern and  
21

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DECLARATION OF SUSAN C. NELSON - 3

DUNN&BLACK  
LAWYERS  
A PROFESSIONAL SERVICE CORPORATION  
SANNED BANK BUILDING  
111 NORTH PODEL SUITE 300  
SPokane WASHINGTON 99201-0705  
VOICE: (509) 466-5711 • FAX: (509) 455-8704

1 segregate out with a degree of specificity the exact amount of time spent on matters that  
2 were ultimately dismissed. This is because there were research and work efforts  
3 integrally intertwined with claims that were ultimately tried to a successful resolution.  
4 Accordingly, these specific billable entries from January 1, 2011 to February 3, 2011  
5 were discounted by 50% to account for time spent on those claims this Court dismissed  
6 on February 3, 2011.  
7

8  
9 8. Similarly, certain billable entries from February 4, 2011 to September 9,  
10 2011 have been discounted by 25% to account for time spent on Plaintiff Mehring's  
11 hostile work environment and tortious interference with contractual relations claims  
12 which were ultimately dismissed on September 9, 2011. Additionally, a time entry for  
13 my work done on 8/31/2011 for .5 hours was removed in total as it was a clerical error.  
14 Attached hereto as **Exhibit F** is a true and correct copy of Dunn & Black's 2011 billing  
15 statement with the specific proposed discounted billing entries highlighted.  
16

17  
18 9. The majority of Plaintiff's time after February 3, 2011 was spent on  
19 fitness for duty issues, due process claims, retaliation, discovery disputes, and trial.  
20 Accordingly, Plaintiff applied a 25% deduction rather than 50% for the identified billing  
21 entries in order to adjust for the de minimis work done on those claims this Court  
22 dismissed on September 9, 2011. As a result, Plaintiff has deducted \$19,556.38 in  
23 attorney and staff billable fees from its original fee request.  
24  
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26

DECLARATION OF SUSAN C. NELSON - 4

DUNN&BLACK  
LAWYERS  
A PROFESSIONAL SERVICE CORPORATION  
BANNER BANK BUILDING  
111 NORTH HUST, SUITE 300  
SPOKANE, WASHINGTON 83201-3705  
VOICE: (509) 453-8711 • FAX: (509) 455-8734

1           10. Plaintiff's original fee request sought a total of \$494,316.25 for attorney  
2 and staff time billed from January 1, 2011 to November 4, 2011. Based upon the  
3 attached segregation, that amount has been reduced to \$474,759.88.  
4

5           11. Thus, the total amount to be deducted, based upon Plaintiff's best effort to  
6 identify and segregate dismissed claims from those that were litigated, amounts to  
7 \$43,995.48 in attorney and staff fees.  
8

9           12. Thus, based upon the foregoing, Plaintiff's modified and amended fee  
10 request for attorney and staff time through November 4, 2011, is a total of \$606,502.78.

11           13. Additionally, Plaintiff is seeking an award of \$32,298.78 in compensable  
12 costs pursuant to 42 U.S.C. § 1988; RCW 4.84.010; and Ruff v. County of Kings, 700  
13 F.Supp.2d 1225, 1244 (E.D. Cal., 2010). Ruff affirms that pursuant to 42 U.S.C.  
14 § 1988, the prevailing party may recover "*out-of-pocket expenses that would normally*  
15 *be charged to a fee paying client.*" Id. at 1244.  
16

17           14. As evidenced by Exhibits B, D, and F hereto, Dunn & Black customarily  
18 bills its clients expenses associated with: photocopies, trial expenses, long distance, fax  
19 fees, parking, electronic legal research (Westlaw fees), postage, the employ of a  
20 Discovery Master, acquiring hearing transcripts, courier services/hand deliveries, as  
21 well as witness fees and professional fees associated with medical personnel such as  
22 compensating Dr. Palmer at her professional rate for time spent at trial. Attached hereto  
23  
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26

DECLARATION OF SUSAN C. NELSON - 5

DUNN&BLACK  
ATTORNEYS  
A PROFESSIONAL SERVICE CORPORATION  
BANNER BANK BUILDING  
111 NORTH POST SUITE 300  
SPOKANE WASHINGTON 99201-0705  
VOICE (509) 425-8771 • FAX (509) 455-8734

1 as **Exhibit G** is a true and correct copy of an Excel spreadsheet summarizing the costs  
2 incurred by Plaintiff Mehring from the onset of this matter to November 8, 2011.

3  
4 15. Plaintiff is also seeking an additional award of **\$51,560.50** for billable  
5 attorney and staff time as well as **\$886.11** in costs spent on various post-trial motions  
6 and in seeking an award of attorney fees and costs from November 5, 2011 to December  
7 23, 2011. Attached hereto as **Exhibit H** is a true and correct copy of an itemization of  
8 the time and costs spent by Dunn & Black and thus incurred by Plaintiff Mehring  
9 relating to these post-trial motions and the pending Motion for Fees and Costs. There is  
10 an overlap of costs from November 7-8, 2011 on **Exhibits F & G**. However, those  
11 costs have only been accounted for once in the original costs and have been subtracted  
12 from the November 8, 2011 to December 23, 2011 Cost Bill.

13  
14  
15 16. Attached hereto as **Exhibit I** is a true and correct copy of an Excel  
16 spreadsheet setting forth a summary of the November 5, 2011 to December 23, 2011  
17 fees and costs.

18  
19 17. In summary, Plaintiff's fees and costs request in this matter through  
20 December 23, 2011, is as follows:

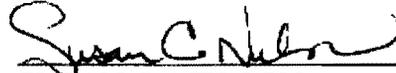
|                            |                            |         |                           |
|----------------------------|----------------------------|---------|---------------------------|
| 21 Fees through 11/20/11-- | <b>\$606,502.78</b>        | Costs-- | <b>\$32,298.78</b>        |
| 22 Fees through 12/23/11-- | <b>\$ 51,560.50</b>        | Costs-- | <b>S 886.11</b>           |
| 23                         |                            |         |                           |
| 24                         | <b><u>\$658,063.28</u></b> |         | <b><u>\$33,184.89</u></b> |
| 25                         |                            |         |                           |
| 26                         |                            |         |                           |

DECLARATION OF SUSAN C. NELSON - 6

DUNN & BLACK  
LAWYERS  
A PROFESSIONAL SERVICE CORPORATION  
BANKER BUILDING  
111 NORTH POST, SUITE 300  
SPOKANE, WASHINGTON 99201-0705  
VOICE: 509-465-9711 • FAX: 509-465-8734

1 I declare under penalty of perjury under the laws of the State of Washington that  
2 the foregoing is true and correct.

3  
4 DATED this 30 day of December, 2011, at Spokane, Washington.

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SUSAN C. NELSON

DECLARATION OF SUSAN C. NELSON - 7

DUNN & BLACK  
LAWYERS  
A PROFESSIONAL SERVICE CORPORATION  
BANKER BANK BUILDING  
NORTH POST, SUITE 300  
SPOKANE, WASHINGTON 99201-0706  
VOICE: (509) 455-8711 • FAX: (509) 455-8734

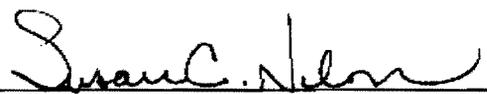
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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of December, 2011, I caused to be served a true and correct copy of the foregoing document to the following:

|                                     |                  |                            |
|-------------------------------------|------------------|----------------------------|
| <input checked="" type="checkbox"/> | HAND DELIVERY    | Ellen M. O'Hara            |
| <input type="checkbox"/>            | U.S. MAIL        | Assistant City Attorney    |
| <input type="checkbox"/>            | OVERNIGHT MAIL   | 808 W. Spokane Falls Blvd. |
| <input type="checkbox"/>            | FAX TRANSMISSION | Spokane, WA 99201          |
| <input type="checkbox"/>            | EMAIL            |                            |

|                                     |                  |                              |
|-------------------------------------|------------------|------------------------------|
| <input checked="" type="checkbox"/> | HAND DELIVERY    | Milton G. Rowland            |
| <input type="checkbox"/>            | U.S. MAIL        | Foster Pepper, PLLC          |
| <input type="checkbox"/>            | OVERNIGHT MAIL   | 422 W. Riverside, Suite 1310 |
| <input type="checkbox"/>            | FAX TRANSMISSION | Spokane, WA 99201            |
| <input type="checkbox"/>            | EMAIL            |                              |

  
\_\_\_\_\_  
SUSAN C. NELSON

DECLARATION OF SUSAN C. NELSON - 8

DUNN&BLACK  
LAWYERS  
A PROFESSIONAL SERVICE CORPORATION  
BANNER BANK BUILDING  
111 NORTH LOCUST SUITE 300  
SPOKANE, WASHINGTON 99201-6706  
VOICE: (509) 455-8711 • FAX: (509) 455-8734

MEHRING V. CITY OF SPOKANE, et al

2009 Billing Adjustment

Total Segregated \$4,676.85

| ROBERT A. DUNN (attorney) |       |          |            |
|---------------------------|-------|----------|------------|
| DATE                      | HOURS | RATE     | AMT BILLED |
| 8/20/2009                 | 0.5   | \$400.00 | \$200.00   |
| 8/24/2009                 | 0.3   | \$400.00 | \$120.00   |
| 8/28/2009                 | 1.3   | \$400.00 | \$520.00   |
| 8/29/2009                 | 1.6   | \$400.00 | \$640.00   |
| 8/31/2009                 | 0.8   | \$400.00 | \$320.00   |
| 9/1/2009                  | 1     | \$400.00 | \$400.00   |
| 11/14/2009                | 2     | \$400.00 | \$800.00   |
| TOTAL                     |       |          | \$3,000.00 |
| 50% ADJUSTMENT            |       |          | \$1,500.00 |

| SUSAN C. NELSON (attorney) |       |          |            |
|----------------------------|-------|----------|------------|
| DATE                       | HOURS | RATE     | AMT BILLED |
| 8/5/2009                   | 0.2   | \$185.00 | \$37.00    |
| 8/6/2009                   | 0.2   | \$185.00 | \$37.00    |
| 8/14/2009                  | 2.6   | \$185.00 | \$481.00   |
| 8/20/2009                  | 3     | \$185.00 | \$555.00   |
| 8/24/2009                  | 0.3   | \$185.00 | \$55.50    |
| 8/25/2009                  | 1     | \$185.00 | \$185.00   |
| 8/26/2009                  | 1     | \$185.00 | \$185.00   |
| 8/27/2009                  | 0.5   | \$185.00 | \$92.50    |
| 8/28/2009                  | 1     | \$185.00 | \$185.00   |
| 8/29/2009                  | 0.7   | \$185.00 | \$129.50   |
| 8/30/2009                  | 0.1   | \$185.00 | \$18.50    |
| 8/31/2009                  | 0.7   | \$185.00 | \$129.50   |
| 9/1/2009                   | 0.8   | \$185.00 | \$148.00   |
| 9/2/2009                   | 1     | \$185.00 | \$185.00   |
| 9/3/2009                   | 0.2   | \$185.00 | \$37.00    |
| 9/8/2009                   | 0.2   | \$185.00 | \$37.00    |
| 9/16/2009                  | 2.8   | \$185.00 | \$518.00   |
| 9/17/2009                  | 0.4   | \$185.00 | \$74.00    |
| 11/23/2009                 | 1.8   | \$185.00 | \$333.00   |
| 11/24/2009                 | 2.9   | \$185.00 | \$536.50   |
| 11/25/2009                 | 0.6   | \$185.00 | \$111.00   |
| 11/29/2009                 | 0.8   | \$185.00 | \$148.00   |
| 11/30/2009                 | 0.8   | \$185.00 | \$148.00   |
| 12/1/2009                  | 3.4   | \$185.00 | \$629.00   |
| 12/3/2009                  | 0.8   | \$185.00 | \$148.00   |
| 12/4/2009                  | 0.4   | \$185.00 | \$74.00    |
| 12/7/2009                  | 0.4   | \$185.00 | \$74.00    |
| 12/10/2009                 | 0.6   | \$186.00 | \$111.60   |
| 12/14/2009                 | 0.8   | \$187.00 | \$149.60   |
| 12/15/2009                 | 1.5   | \$188.00 | \$282.00   |
| 12/17/2009                 | 0.4   | \$185.00 | \$74.00    |
| 12/18/2009                 | 0.2   | \$185.00 | \$37.00    |
| TOTAL                      |       |          | \$5,945.20 |
| 50% ADJUSTMENT             |       |          | \$2,972.60 |

| SARAH POWELL (paralegal) |       |         |            |
|--------------------------|-------|---------|------------|
| DATE                     | HOURS | RATE    | AMT BILLED |
| 8/20/2009                | 0.1   | \$95.00 | \$9.50     |
| TOTAL                    |       |         | \$9.50     |
| 50% ADJUSTMENT           |       |         | \$4.75     |

| SHELLIE GARRTY (paralegal) |       |         |            |
|----------------------------|-------|---------|------------|
| DATE                       | HOURS | RATE    | AMT BILLED |
| 8/20/2009                  | 1.3   | \$95.00 | \$123.50   |
| 9/2/2009                   | 0.2   | \$95.00 | \$19.00    |
| 9/8/2009                   | 0.2   | \$95.00 | \$19.00    |
| 9/16/2009                  | 0.6   | \$95.00 | \$57.00    |
| 12/15/2009                 | 1.8   | \$95.00 | \$171.00   |
| 12/17/2009                 | 0.1   | \$95.00 | \$9.50     |
| TOTAL                      |       |         | \$399.00   |
| 50% ADJUSTMENT             |       |         | \$199.50   |



**DB**  
**DUNN & BLACK**  
 LAWYERS

A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID 91-1578231

Invoice submitted to:  
 Jay Mehring  
 PO Box 48663  
 Spokane, WA 99228

November 29, 2011

In Reference To: Anne Kirkpatrick and City of Spokane

**Professional Services**

|                 |  | <u>Rate</u> | <u>Hours</u>     |
|-----------------|--|-------------|------------------|
| 1/8/2009 - TBF  | E-mail from M. O'Brien; Print case; Scan and send to R. Dunn   | \$275.00/hr | 0.40<br>\$110.00 |
| 1/27/2009 - TBF | Meeting with J. Mehring, R. Dunn and C. Bugbee; Research re: "double damages" for withholding wages      | \$275.00/hr | 2.00<br>\$550.00 |
| 1/28/2009 - TBF | E-mail case re: double damages to Jay; Discussion with R. Dunn   | \$275.00/hr | 0.40<br>\$110.00 |
| 2/11/2009 - TBF | Telephone call from J. Mehring responding to e-mail; Request to M. O'Brien and R. Dunn re: fee agreement | \$275.00/hr | 0.50<br>\$137.50 |
| 2/18/2009 - TBF | Respond to e-mail; Fee agreement   | \$275.00/hr | 0.50<br>\$137.50 |
| 3/2/2009 - TBF  | Fee Agreement back from R. Dunn; Telephone call with J. Mehring  | \$275.00/hr | 0.50<br>\$137.50 |
| 3/4/2009 - TBF  | Prepare for and meet with J. Mehring re: fees and fee agreement  | \$275.00/hr | 1.00<br>\$275.00 |
| - MCO           | Final Contingency Fee and Hearing Fee Agreements in preparation for meeting with J. Mehring              | \$75.00/hr  | 0.10<br>\$7.50   |
| 3/18/2009 - TBF | Discussion with R. Dunn re: case law and contingency fee; Telephone call to client                       | \$275.00/hr | 0.50<br>\$137.50 |



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 LAWYERS

Jay Mehring

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID #1-1578231

|                 |   | <u>Rate</u> | <u>Hours</u>      |
|-----------------|---|-------------|-------------------|
| 3/22/2009 - TBF | Respond to J. Mehring re: fees question   | \$275.00/hr | 0.50<br>\$137.50  |
| 7/10/2009 - TBF | Review e-mails; Claim from J. Mehring;<br>Response e-mail; Conference with R. Dunn  | \$275.00/hr | 0.30<br>NO CHARGE |
| 8/5/2009 - SCN  | Conference with R. Dunn   | \$170.00/hr | 0.20<br>\$34.00   |
| 8/6/2009 - SCN  | Strategy and prepare Tort Claim   | \$170.00/hr | 0.20<br>\$34.00   |
| 8/13/2009 - RAD | To C. Bugbee's office for document review;<br>Meeting with client; Document review  | \$170.00/hr | 2.80<br>\$476.00  |
| 8/14/2009 - SCN | Conference with R. Dunn; Review file notes<br>and client tender from defense attorney;<br>Review Tort Claim forms                         | \$170.00/hr | 2.80<br>\$442.00  |
| 8/17/2009 - SCN | Review case file and document   | \$170.00/hr | 0.50<br>\$85.00   |
| 8/19/2009 - SCN | Conference with R. Dunn   | \$170.00/hr | 0.20<br>\$34.00   |
| 8/20/2009 - SP  | Revise Tort Claim   | \$75.00/hr  | 0.10<br>\$7.50    |
| - SG            | Research City website for Claim Form; Draft<br>Claim Form; E-mail to R. Dunn and S.<br>Nelson   | \$75.00/hr  | 1.30<br>\$97.50   |
| - RAD           | E-mails from client. Conference re: Tort<br>Claim Notice  | \$170.00/hr | 0.50<br>\$85.00   |
| - SCN           | Draft Tort Claim; Print articles and Motion to<br>Dismiss; E-mails with client (x2); Research<br>changes to RCW 4.96.020; Tort Claim Form | \$170.00/hr | 3.00<br>\$510.00  |
| 8/21/2009 - SCN | Client e-mails; Telephone call with client  | \$170.00/hr | 0.80<br>\$136.00  |
| 8/24/2009 - RAD | Conference re: Claim Form issues  | \$170.00/hr | 0.30<br>\$51.00   |
| - SCN           | Conference with R. Dunn re: Tort Claim;<br>Client e-mail  | \$170.00/hr | 0.30<br>\$51.00   |
| 8/25/2009 - SCN | E-mail from client; Draft letter  | \$170.00/hr | 1.00<br>\$170.00  |

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 LAWYERS

Jay Mehring

A PROFESSIONAL SERVICE CORPORATION  
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 FEDERAL TAX ID 91-1578231

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|           |   | <u>Rate</u> | <u>Hours</u>     |
|-----------|---|-------------|------------------|
| 8/26/2009 | - SCN E-mails with client; Draft demand letter  | \$170.00/hr | 1.00<br>\$170.00 |
| 8/27/2009 | - SCN Telephone call with client; E-mail client; Conference with R. Dunn                      | \$170.00/hr | 0.50<br>\$85.00  |
| 8/28/2009 | - RAD Redraft demand letter; Telephone call to client; Conference re: Tort Claim letter       | \$170.00/hr | 1.30<br>\$221.00 |
|           | - SCN Conference with R. Dunn; Edit letter; Conference call with J. Mehring                   | \$170.00/hr | 1.00<br>\$170.00 |
| 8/29/2009 | - RAD Telephone call to client; Review of demand letter                                       | \$170.00/hr | 1.60<br>\$272.00 |
|           | - SCN Telephone call with client; Edit letter; E-mail revised draft to client                 | \$170.00/hr | 0.70<br>\$119.00 |
| 8/30/2009 | - SCN E-mail with client re. demand letter  | \$170.00/hr | 0.10<br>\$17.00  |
| 8/31/2009 | - RAD Conference re: demand letter; Final same  | \$170.00/hr | 0.80<br>\$136.00 |
|           | - SCN Conference with R. Dunn; Edit letter; E-mail client; Review client e-mail; Draft letter | \$170.00/hr | 0.70<br>\$119.00 |
| 9/1/2009  | - SCN Conference with R. Dunn; Client e-mail; Review letter and merge with previous letter    | \$170.00/hr | 0.80<br>\$136.00 |
|           | - RAD Telephone call to/from client; Redraft demand letter                                    | \$170.00/hr | 1.00<br>\$170.00 |
| 9/2/2009  | - SG Revise and final demand letter   | \$75.00/hr  | 0.20<br>\$15.00  |
|           | - SCN Telephone call with client; E-mails with client; Edit letters                           | \$170.00/hr | 1.00<br>\$170.00 |
| 9/3/2009  | - SCN E-mail client; Final demand letter and send   | \$170.00/hr | 0.20<br>\$34.00  |
| 9/8/2009  | - SG E-mail documents to client.  | \$75.00/hr  | 0.20<br>\$15.00  |
|           | - SCN Send letter and Tort Claim to client  | \$170.00/hr | 0.20<br>\$34.00  |
| 9/10/2009 | - SCN Telephone call with client  | \$170.00/hr | 0.20<br>\$34.00  |

  
**DUNN & BLACK**  
 LAWYERS

Jay Mehring

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID 91-1578231

|           |       |   | <u>Rate</u> | <u>Hours</u>     |
|-----------|-------|---|-------------|------------------|
| 9/11/2009 | - SCN | Conference with R. Dunn re: administrative leave  | \$170.00/hr | 0.20<br>\$34.00  |
| 9/14/2009 | - RAD | Telephone call to client; Conference re: administrative leave issues  | \$170.00/hr | 1.00<br>\$170.00 |
|           | - SCN | Telephone call from Jay; Conference with R. Dunn and Jay  | \$170.00/hr | 0.50<br>\$85.00  |
| 9/15/2009 | - SCN | Client e-mail and article   | \$170.00/hr | 0.30<br>\$51.00  |
|           | - RAD | E-mail from client  | \$170.00/hr | 0.30<br>\$51.00  |
| 9/16/2009 | - RAD | Telephone call to client; Conference re: Discovery issues   | \$170.00/hr | 0.80<br>\$153.00 |
|           | - SG  | Meeting with client. Notarize Claim; Redaction of Exhibit   | \$75.00/hr  | 0.60<br>\$45.00  |
|           | - SCN | Telephone call with client; conference with R. Dunn; Meeting with client; Have document redacted; Voicemail from E. Jacobson, Assistant City Attorney; Telephone call with Jay (x2); Have Tort Claim prepared for signature | \$170.00/hr | 2.80<br>\$476.00 |
| 9/17/2009 | - SG  | Draft and final Medical Authorizations (x3)   | \$75.00/hr  | 0.30<br>\$22.50  |
|           | - SCN | File Tort Claim; Telephone call from client; Check web for information re' search   | \$170.00/hr | 0.40<br>\$68.00  |
| 9/18/2009 | - SCN | Client communications   | \$170.00/hr | 0.20<br>\$34.00  |
| 9/22/2009 | - SCN | Meet with client; Conference with R. Dunn   | \$170.00/hr | 0.80<br>\$136.00 |
| 9/23/2009 | - RAD | E-mails to/from client; Conference re: press release issue  | \$170.00/hr | 0.70<br>\$119.00 |
|           | - SCN | E-mails with client; Conference with R. Dunn; E-mail to Spokesman Review; Voicemail for J. Holy   | \$170.00/hr | 0.60<br>\$102.00 |
| 9/24/2009 | - RAD | Telephone call to client; Telephone call to Spokesman Review  | \$170.00/hr | 0.90<br>\$153.00 |

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 LAWYERS

Jay Mehring

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0706  
 FEDERAL TAX ID #1-1578231

|                  |   | Rate        | Hours            |
|------------------|---|-------------|------------------|
| 9/25/2009 - SCN  | Telephone call with J. Holy; Voicemail to Spokesman Review; Conference with R. Dunn             | \$170.00/hr | 1.50<br>\$255.00 |
| 9/28/2009 - SCN  | Contact Spokesman for a copy of Kirkpatrick's Written Statement                                 | \$170.00/hr | 0.20<br>\$34.00  |
| 10/6/2009 - SG   | E-mail from S. Nelson; Research re: filing date and response deadline; E-mail to client         | \$75.00/hr  | 0.20<br>\$15.00  |
| - SCN            | Meeting with client   | \$170.00/hr | 0.50<br>\$85.00  |
| 10/7/2009 - SCN  | Review Center for Justice News Report re: Kirkpatrick; Send to client                           | \$170.00/hr | 0.40<br>\$68.00  |
| 10/8/2009 - SCN  | E-mail client   | \$170.00/hr | 0.20<br>\$34.00  |
| 10/9/2009 - SCN  | Review client documents   | \$170.00/hr | 0.30<br>\$51.00  |
| 10/20/2009 - SCN | Voicemail from client; Voicemail for Spokane City Attorney E. Jacobson; Conference with R. Dunn | \$170.00/hr | 0.40<br>\$68.00  |
| 10/28/2009 - SCN | Letters to medical providers  | \$170.00/hr | 0.20<br>\$34.00  |
| - SG             | Revise and final Requests for Medical Records   | \$75.00/hr  | 0.20<br>\$15.00  |
| 10/29/2009 - SCN | Final letters for medical records   | \$170.00/hr | 0.20<br>\$34.00  |
| 10/30/2009 - SCN | Voicemail from client; Return call  | \$170.00/hr | 0.30<br>\$51.00  |
| 11/2/2009 - SCN  | Left message re: Mehring matter with E. Jacobson City Attorney; E-mail client re: call          | \$170.00/hr | 0.20<br>\$34.00  |
| 11/3/2009 - SCN  | Voicemail from City Attorney; E-mail from S. Larson   | \$170.00/hr | 0.40<br>\$68.00  |
| - SG             | Telephone call with S. Larson re: records   | \$75.00/hr  | 0.10<br>\$7.50   |
| 11/4/2009 - SCN  | Return telephone call to City Attorney  | \$170.00/hr | 0.20<br>\$34.00  |
| 11/5/2009 - SCN  | Telephone call from client  | \$170.00/hr | 0.10<br>\$17.00  |

**DB**  
**DUNN & BLACK**  
 LAWYERS

Jay Mehring

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID 01-1578231

|                  |   | <u>Rate</u> | <u>Hours</u>     |
|------------------|---|-------------|------------------|
| 11/8/2009 - RAD  | Conference re: Mehring Discovery  | \$170.00/hr | 0.30<br>\$51.00  |
| - SCN            | Review client medical records; Conference with R. Dunn; Send records to client                  | \$170.00/hr | 1.00<br>\$170.00 |
| 11/11/2009 - SG  | Research re: D. Palmer  | \$75.00/hr  | 0.20<br>\$15.00  |
| 11/17/2009 - RAD | E-mails to/from client  | \$170.00/hr | 0.30<br>\$51.00  |
| - SCN            | Client e-mail; Conference with R. Dunn  | \$170.00/hr | 0.70<br>\$119.00 |
| 11/18/2009 - SCN | Voicemail from City Attorney;<br>Call/conference with City Attorney;<br>Conference with R. Dunn | \$170.00/hr | 0.70<br>\$119.00 |
| 11/19/2009 - SCN | Client e-mail; Telephone call from client   | \$170.00/hr | 0.50<br>\$85.00  |
| 11/23/2009 - SCN | Draft Complaint   | \$170.00/hr | 1.80<br>\$306.00 |
| 11/24/2009 - SCN | Draft Complaint; Conference with R. Dunn  | \$170.00/hr | 2.90<br>\$493.00 |
| 11/25/2009 - SCN | Review Causes for Complaint; Conference with R. Dunn  | \$170.00/hr | 0.60<br>\$102.00 |
| 11/29/2009 - SCN | Draft Complaint   | \$170.00/hr | 0.80<br>\$136.00 |
| 11/30/2009 - SCN | Draft Complaint   | \$170.00/hr | 0.80<br>\$136.00 |
| 12/1/2009 - SCN  | Draft Complaint; Review client notes  | \$170.00/hr | 3.40<br>\$578.00 |
| 12/3/2009 - SCN  | Review and edit draft Complaint, Client e-mail  | \$170.00/hr | 0.80<br>\$136.00 |
| 12/4/2009 - SCN  | E-mails with client; Review edits   | \$170.00/hr | 0.40<br>\$68.00  |
| 12/7/2009 - SCN  | Review Jay's edits  | \$170.00/hr | 0.40<br>\$68.00  |
| 12/10/2009 - SCN | Edit Complaint; Conference with R. Dunn;<br>Client e-mail                                       | \$170.00/hr | 0.60<br>\$102.00 |

  
**DUNN & BLACK**  
 LAWYERS

Jay Mehring

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID #1-1578933

|                                    |  | <u>Rate</u> | <u>Hours</u>     |
|------------------------------------|--|-------------|------------------|
| 12/14/2009 - RAD                   | Redraft Complaint  | \$170.00/hr | 2.00<br>\$340.00 |
| - SCN                              | Edit Complaint; Conference with R. Dunn;<br>E-mail client  | \$170.00/hr | 0.80<br>\$136.00 |
| 12/15/2009 - SCN                   | E-mail from client (x3); Edit Complaint;<br>Conference with R. Dunn; Telephone call<br>with client; Contact Spokesman; Meet with<br>client; Final pleadings for filing | \$170.00/hr | 1.50<br>\$255.00 |
| - SG                               | Revise and final Complaint Witness<br>Signature; Draft, revise and final<br>Summonses; Prepare for filing  | \$75.00/hr  | 1.80<br>\$135.00 |
| 12/16/2009 - SCN                   | Voicemail from J. Mehring; Telephone call<br>with J. Mehring   | \$170.00/hr | 0.30<br>\$51.00  |
| 12/17/2009 - SCN                   | Conference re: service on defendants;<br>Calendar dates; Review service of process<br>letter   | \$170.00/hr | 0.40<br>\$68.00  |
| - SG                               | Arrange service of Summons and Complaint   | \$75.00/hr  | 0.10<br>\$7.50   |
| 12/18/2009 - SCN                   | Scan Complaint; E-mail Spokesman   | \$170.00/hr | 0.20<br>\$34.00  |
| For professional services rendered |  | 71.40       | \$12,235.50      |

Additional Charges :

|                                    | <u>Qty/Price</u> |        |
|------------------------------------|------------------|--------|
| 4/14/2009 - Photocopy Charge(s)    | 4<br>0.20        | 0.80   |
| 9/14/2009 - Postage Charge(s)      | 1<br>5.16        | 5.16   |
| - Photocopy Charge(s)              | 226<br>0.20      | 45.20  |
| - Photocopy Charge(s)              | 1,806<br>0.20    | 361.20 |
| 9/15/2009 - Westlaw-Legal Research | 1<br>9.64        | 9.64   |
| 10/12/2009 - Photocopy Charge(s)   | 6<br>0.20        | 1.20   |

  
**DUNN & BLACK**  
 LAWYERS

Jay Mehring

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID 91-1578231

|   | <u>Qty/Price</u> | <u>Amount</u> |
|---|------------------|---------------|
| 10/12/2009 - Photocopy Charge(s)  | 171<br>0.20      | 34.20         |
| 10/13/2009 - Postage Charge(s)  | 1<br>0.44        | 0.44          |
| 10/15/2009 - Long Distance Charge(s)                                    | 1<br>0.29        | 0.29          |
| 11/3/2009 - Northside Family Medicine                                   | 1<br>61.40       | 61.40         |
| 11/11/2009 - Postage Charge(s)  | 1<br>1.76        | 1.76          |
| - Photocopy Charge(s)   | 44<br>0.20       | 8.80          |
| 12/1/2009 - Westlaw-Legal Research                                      | 1<br>1.87        | 1.87          |
| 12/15/2009 - Postage Charge(s)  | 1<br>0.44        | 0.44          |
| - Filing fee  | 1<br>230.00      | 230.00        |
| 12/28/2009 - Service of Process Fee. Associated Messenger Service, Inc. | 1<br>145.00      | 145.00        |
| Total costs   |                  | \$907.40      |
| For professional services rendered                                      | 71.40            | \$13,142.90   |

MEHRING V. CITY OF SPOKANE, et al

2010 Billing Adjustment

Total Segregated \$19,762.25

| ROBERT A. DUNN (attorney) |       |          |            |
|---------------------------|-------|----------|------------|
| DATE                      | HOURS | RATE     | AMT BILLED |
| 8/28/2010                 | 2.7   | \$400.00 | \$1,080.00 |
| 8/29/2010                 | 2.5   | \$400.00 | \$1,000.00 |
| 8/30/2010                 | 2.4   | \$400.00 | \$960.00   |
| 9/1/2010                  | 7.7   | \$400.00 | \$3,080.00 |
| 12/2/2010                 | 1.4   | \$400.00 | \$560.00   |
| 12/7/2010                 | 0.8   | \$400.00 | \$320.00   |
| 12/8/2010                 | 1     | \$400.00 | \$400.00   |
| TOTAL                     |       |          | \$7,400.00 |
| 50% ADJUSTMENT            |       |          | \$3,700.00 |

| SUSAN C. NELSON (attorney) |       |          |             |
|----------------------------|-------|----------|-------------|
| DATE                       | HOURS | RATE     | AMT BILLED  |
| 1/14/2010                  | 0.5   | \$185.00 | \$92.50     |
| 1/18/2010                  | 0.2   | \$185.00 | \$37.00     |
| 6/8/2010                   | 1.5   | \$185.00 | \$277.50    |
| 7/23/2010                  | 2.9   | \$185.00 | \$525.50    |
| 7/26/2010                  | 3.8   | \$185.00 | \$703.00    |
| 7/27/2010                  | 4.8   | \$185.00 | \$888.00    |
| 7/28/2010                  | 5.8   | \$185.00 | \$1,073.00  |
| 7/29/2010                  | 6.5   | \$185.00 | \$1,202.50  |
| 7/30/2010                  | 3     | \$185.00 | \$555.00    |
| 8/2/2010                   | 4     | \$185.00 | \$740.00    |
| 8/3/2010                   | 3.5   | \$185.00 | \$647.50    |
| 8/4/2010                   | 4.6   | \$185.00 | \$851.00    |
| 8/5/2010                   | 3.5   | \$185.00 | \$647.50    |
| 8/6/2010                   | 1.2   | \$185.00 | \$222.00    |
| 8/9/2010                   | 7.7   | \$185.00 | \$1,429.50  |
| 8/10/2010                  | 4.3   | \$185.00 | \$795.50    |
| 8/11/2010                  | 3.8   | \$185.00 | \$703.00    |
| 8/15/2010                  | 1.2   | \$185.00 | \$222.00    |
| 8/16/2010                  | 1.9   | \$185.00 | \$351.50    |
| 8/17/2010                  | 2.1   | \$185.00 | \$388.50    |
| 8/18/2010                  | 2.2   | \$185.00 | \$407.00    |
| 8/24/2010                  | 3.1   | \$185.00 | \$573.50    |
| 8/25/2010                  | 5.1   | \$185.00 | \$943.50    |
| 8/26/2010                  | 5     | \$185.00 | \$925.00    |
| 8/27/2010                  | 0.7   | \$185.00 | \$129.50    |
| 8/28/2010                  | 9.5   | \$185.00 | \$1,757.50  |
| 8/29/2010                  | 4.3   | \$185.00 | \$795.50    |
| 8/30/2010                  | 5.8   | \$185.00 | \$1,073.00  |
| 8/31/2010                  | 8.8   | \$185.00 | \$1,628.00  |
| 9/1/2010                   | 7.9   | \$185.00 | \$1,461.50  |
| 9/2/2010                   | 5.3   | \$185.00 | \$980.50    |
| 9/14/2010                  | 3     | \$185.00 | \$555.00    |
| 9/15/2010                  | 0.2   | \$185.00 | \$37.00     |
| 9/17/2010                  | 5.7   | \$185.00 | \$1,054.50  |
| 9/20/2010                  | 2.4   | \$185.00 | \$444.00    |
| 11/18/2010                 | 2.8   | \$185.00 | \$518.00    |
| 11/19/2010                 | 2.2   | \$185.00 | \$407.00    |
| 11/20/2010                 | 2.5   | \$185.00 | \$462.50    |
| 11/21/2010                 | 3.5   | \$185.00 | \$647.50    |
| 11/27/2010                 | 3.5   | \$185.00 | \$647.50    |
| 11/28/2010                 | 2     | \$185.00 | \$370.00    |
| 11/29/2010                 | 5.5   | \$185.00 | \$1,017.50  |
| 12/2/2010                  | 2.4   | \$185.00 | \$444.00    |
| 12/3/2010                  | 2.4   | \$185.00 | \$444.00    |
| 12/6/2010                  | 2.6   | \$185.00 | \$481.00    |
| 12/7/2010                  | 5.5   | \$185.00 | \$1,017.50  |
| 12/8/2010                  | 3.5   | \$185.00 | \$647.50    |
| TOTAL                      |       |          | \$31,098.50 |
| 50% ADJUSTMENT             |       |          | \$15,549.25 |

| WES D. MORTENSEN (attorney) |       |          |            |
|-----------------------------|-------|----------|------------|
| DATE                        | HOURS | RATE     | AMT BILLED |
| 9/17/2010                   | 0.5   | \$190.00 | \$95.00    |
| TOTAL                       |       |          | \$95.00    |
| 50% ADJUSTMENT              |       |          | \$47.50    |

| SMELLIE GARRET (paralegal) |       |         |            |
|----------------------------|-------|---------|------------|
| DATE                       | HOURS | RATE    | AMT BILLED |
| 1/15/2010                  | 0.2   | \$95.00 | \$19.00    |
| 1/18/2010                  | 1.1   | \$95.00 | \$104.50   |
| 8/31/2010                  | 1.5   | \$95.00 | \$142.50   |
| 9/1/2010                   | 3.7   | \$95.00 | \$351.50   |
| 9/2/2010                   | 0.9   | \$95.00 | \$85.50    |
| 9/9/2010                   | 0.2   | \$95.00 | \$19.00    |
| 9/14/2010                  | 0.6   | \$95.00 | \$57.00    |
| 9/15/2010                  | 0.4   | \$95.00 | \$38.00    |
| 9/20/2010                  | 0.4   | \$95.00 | \$38.00    |
| 11/29/2010                 | 0.5   | \$95.00 | \$47.50    |
| 12/8/2010                  | 0.3   | \$95.00 | \$28.50    |
| TOTAL                      |       |         | \$931.00   |
| 50% ADJUSTMENT             |       |         | \$465.50   |



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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH FOSTER, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID #1-1578231

Invoice submitted to:  
 Jay Mehring  
 PO Box 48663  
 Spokane, WA 99228

November 29, 2011

In Reference To: Anne Kirkpatrick and City of Spokane

**Professional Services**

|                 |  | <u>Rate</u> | <u>Hours</u>     |
|-----------------|--|-------------|------------------|
| 1/4/2010 - SCN  | Letter to City Attorney  | \$175.00/hr | 0.20<br>\$35.00  |
| 1/14/2010 - SCN | Client email; Determine deadline for filing Answer have calendared         | \$175.00/hr | 0.50<br>\$87.50  |
| 1/15/2010 - SG  | Draft Motion for Default   | \$90.00/hr  | 0.20<br>\$18.00  |
| - SCN           | Draft discovery  | \$175.00/hr | 1.50<br>\$262.50 |
| 1/17/2010 - SCN | Draft Discovery Requests   | \$175.00/hr | 1.00<br>\$175.00 |
| 1/18/2010 - SG  | Draft Motion for Default, Declaration of S. Nelson, Order Note for Hearing | \$90.00/hr  | 1.10<br>\$99.00  |
| - SCN           | Review draft pleadings on Motion for Default                               | \$175.00/hr | 0.20<br>\$35.00  |
| 1/19/2010 - SCN | Draft discovery; Review Defendants' Answer to Complaint                    | \$175.00/hr | 2.60<br>\$465.00 |
| 1/20/2010 - SCN | Draft Discovery Requests   | \$175.00/hr | 0.20<br>\$35.00  |
| 1/21/2010 - SCN | Draft Discovery  | \$175.00/hr | 2.20<br>\$385.00 |



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 FEDERAL TAX ID: 91-1578231

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|                 |   | <u>Rate</u> | <u>Hours</u>     |
|-----------------|---|-------------|------------------|
| 1/22/2010 - SCN | Conference with Mehring via phone   | \$175.00/hr | 0.40<br>\$70.00  |
| 1/26/2010 - SCN | Email from client   | \$175.00/hr | 0.20<br>\$35.00  |
| 1/28/2010 - SCN | Review transcripts from criminal proceeding   | \$175.00/hr | 3.50<br>\$612.50 |
| 1/29/2010 - SCN | Review transcripts from criminal proceeding   | \$175.00/hr | 4.80<br>\$840.00 |
| 1/31/2010 - SCN | Review transcripts from criminal trial  | \$175.00/hr | 0.50<br>\$87.50  |
| 2/1/2010 - SCN  | Review transcripts from criminal trial; Email Jay re: opinion on transcripts; Strategize re: Discovery Requests; Conference with Jay  | \$175.00/hr | 4.70<br>\$822.50 |
| 2/2/2010 - SG   | Revise and duplicate Discovery Requests for each defendant; Final Discovery Requests  | \$90.00/hr  | 1.30<br>\$117.00 |
| - SCN           | Final Interrogatories/Requests for Production of Documents -- have hand delivered   | \$175.00/hr | 0.50<br>\$87.50  |
| 2/3/2010 - SG   | Draft Jury Demand   | \$90.00/hr  | 0.20<br>\$18.00  |
| 2/8/2010 - SCN  | Review Osborne v. Bird  | \$175.00/hr | 0.50<br>\$87.50  |
| 2/9/2010 - SCN  | Email client  | \$175.00/hr | 0.20<br>\$35.00  |
| 2/10/2010 - SCN | Review case law re: involving A. Kirkpatrick; E-mail client   | \$175.00/hr | 0.70<br>\$122.50 |
| 2/24/2010 - SCN | Review letter from Ellen O'Hara re: Discovery; Conference with R. Dunn; Have letter sent to client  | \$175.00/hr | 0.40<br>\$70.00  |
| 2/26/2010 - SCN | Telephone call with Mehring; Conference with R. Dunn; Review Requests for Production of Documents/Interrogatories and left voicemail for O'Hara; Telephone call with O'Hara re: Discovery | \$175.00/hr | 1.70<br>\$297.50 |
| 3/2/2010 - SCN  | Review Email/letter/Protective Order from Ellen O'Hara  | \$175.00/hr | 0.40<br>\$70.00  |

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 FEDERAL TAX ID #: 1578231

Jay Mehring

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|                 |  | <u>Rate</u> | <u>Hours</u>     |
|-----------------|--|-------------|------------------|
| 3/3/2010 - SCN  | Review documents produced by City  | \$175.00/hr | 0.80<br>\$140.00 |
| 3/4/2010 - SCN  | Review documents produced by City;<br>Compose and send email to Jay re:<br>discovery and Proposed Protective Order<br>(x3); Conference with R. Dunn; Email<br>O'Hara; Execute Protective Order | \$175.00/hr | 1.70<br>\$297.50 |
| 3/16/2010 - SG  | Draft Joint Case Status Report   | \$90.00/hr  | 0.50<br>\$45.00  |
| 3/18/2010 - SG  | Revise and final Case Status Report; Email<br>to E. O'Hara   | \$90.00/hr  | 0.30<br>\$27.00  |
| - SCN           | Edit Joint Case Status Report; Review fax<br>letter from O'Hara; Conference re: status;<br>Email from O'Hara   | \$175.00/hr | 1.00<br>\$175.00 |
| 3/19/2010 - RAD | To Court for Status Conference   | \$170.00/hr | 1.00<br>\$170.00 |
| - SG            | Revise and final letter to E. O'Hara   | \$90.00/hr  | 0.20<br>\$18.00  |
| - SCN           | Draft letter to O'Hara; Conference with R.<br>Dunn   | \$175.00/hr | 0.50<br>\$87.50  |
| 3/22/2010 - SCN | Case calendaring; Email from Jay Mehring   | \$175.00/hr | 0.50<br>\$87.50  |
| 3/23/2010 - SCN | Search for mention of vote of no confidence  | \$175.00/hr | 0.40<br>\$70.00  |
| 3/24/2010 - SCN | Search for mention of vote of no confidence  | \$175.00/hr | 0.40<br>\$70.00  |
| 3/29/2010 - SCN | Email client (x3)  | \$175.00/hr | 0.40<br>\$70.00  |
| 3/30/2010 - SCN | Check for publication of vote of no<br>confidence  | \$175.00/hr | 0.20<br>\$35.00  |
| 4/2/2010 - MCO  | Review and final letter O'Hara   | \$90.00/hr  | 0.10<br>\$9.00   |
| - SCN           | Draft letter to O'Hara re: discovery   | \$175.00/hr | 0.40<br>\$70.00  |
| 4/6/2010 - SCN  | Email from/to Jay; Review KXLY report  | \$175.00/hr | 0.50<br>\$87.50  |

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 FEDERAL TAX ID 81-1578231

|                 |   | <u>Rate</u> | <u>Hours</u>       |
|-----------------|---|-------------|--------------------|
| 4/7/2010 - SCN  | Follow up on discovery issues; Calendaring  | \$175.00/hr | 0.50<br>\$87.50    |
| 4/8/2010 - SCN  | Letter from O'Hara re: discovery  | \$175.00/hr | 0.20<br>\$35.00    |
| 4/15/2010 - SCN | Review press on vote of no confidence   | \$175.00/hr | 0.20<br>\$35.00    |
| 4/29/2010 - SCN | Telephone call with Mehring; Schedule meeting   | \$175.00/hr | 0.50<br>\$87.50    |
| 5/3/2010 - SCN  | Review recently received Discovery documents  | \$175.00/hr | 0.80<br>\$140.00   |
| 5/4/2010 - RAD  | Meeting with client; Conference re: discovery issues  | \$170.00/hr | 1.20<br>\$204.00   |
| - SG            | Revise and final letter to City Attorney  | \$90.00/hr  | 0.10<br>\$9.00     |
| - SCN           | Review outstanding Discovery; Draft letter to O'Hara; Conference with R. Dunn; Meet with Jay and R. Dunn; Email M. Lawson; Review new Discovery Responses provided today; Telephone call with Marcus Lawson; Review Police Guild Forum; Civil Service commission meeting; Robertson Complaint | \$175.00/hr | 6.00<br>\$1,050.00 |
| 5/5/2010 - SCN  | Conference with Lawson re: experts  | \$175.00/hr | 0.50<br>\$87.50    |
| 5/6/2010 - SCN  | Review letter provided by City attorney attached to further discovery; Email from Lawson re: experts  | \$175.00/hr | 0.70<br>\$122.50   |
| 5/7/2010 - SCN  | Email from M. Lawson re: experts; Email client; Review recent Discovery   | \$175.00/hr | 1.00<br>\$175.00   |
| 5/9/2010 - SCN  | Review documents from City  | \$175.00/hr | 0.50<br>\$87.50    |
| 5/17/2010 - SCN | Review Amended Answer   | \$175.00/hr | 0.40<br>\$70.00    |
| 5/18/2010 - SCN | Have new Discovery copied and sent to Jay   | \$175.00/hr | 0.20<br>\$35.00    |
| 5/20/2010 - SCN | Email document review; File management  | \$175.00/hr | 3.00<br>\$525.00   |

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 FEDERAL TAX ID #1-1570291

|                 |  | <u>Rate</u> | <u>Hours</u>     |
|-----------------|--|-------------|------------------|
| 5/21/2010 - SCN | Document review  | \$175.00/hr | 1.00<br>\$175.00 |
| 6/8/2010 - SCN  | Compare Answer with Amended Answer;<br>Research affirmative defense of RCW<br>10 99.070 -- Domestic violence protection<br>act   | \$175.00/hr | 1.50<br>\$262.50 |
| 6/8/2010 - SCN  | Conference with Jay; Have City's emails<br>downloaded to Outlook; Email from Jay<br>(x5); Forward to R. Dunn and place in file   | \$175.00/hr | 1.80<br>\$315.00 |
| 6/13/2010 - SCN | Draft Discovery Requests   | \$175.00/hr | 0.40<br>\$70.00  |
| 6/22/2010 - SCN | Draft Witness Disclosure List; Review<br>expert profiles; Telephone call with Jay (x3);<br>Conference with R. Dunn; Final pleading   | \$175.00/hr | 2.50<br>\$437.50 |
| 6/23/2010 - SCN | Telephone call with Integrity assurance re:<br>expert; Receive Notice of Summary<br>Judgment Hearing from City; Check local<br>rule 56 re: timing; Send list of individuals for<br>Notice of Depositions; Have CR 56(f)<br>Motion drafted; Voicemail from Win Taylor;<br>Conference with R. Dunn | \$175.00/hr | 2.00<br>\$350.00 |
| 6/24/2010 - SCN | Telephone call with Alyson Taylor  | \$175.00/hr | 0.50<br>\$87.50  |
| 6/25/2010 - SCN | Telephone call with Win Taylor; Email<br>Complaint and Tort Claim to Win; Have<br>letter re: depositions drafted; Final letter;<br>Calendering   | \$175.00/hr | 1.60<br>\$280.00 |
| - SG            | Draft and final letter to E. O'Hara  | \$90.00/hr  | 0.20<br>\$18.00  |
| 6/29/2010 - SCN | Email from Win Taylor  | \$175.00/hr | 0.20<br>\$35.00  |
| 6/30/2010 - SCN | Draft Discovery Requests   | \$175.00/hr | 0.30<br>\$52.50  |
| 7/2/2010 - SG   | Draft letter to E. O'Hara  | \$90.00/hr  | 0.20<br>\$18.00  |
| - SCN           | Review Letter from O'Hara; Conference with<br>R. Dunn; Scheduling; Research Anne<br>Kirkpatrick; Review Discovery and prepare<br>for deposition; Have letter to O'Hara drafted   | \$175.00/hr | 2.70<br>\$472.50 |

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 FEDERAL TAX ID #1-1578224

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
| 7/6/2010 - SCN  | Final letter to O'Hara re: 30(b)(6); Final Deposition Notice to Tiegen; Review Discovery sent to Jay from City; Have copy sent to Jay with deadline for draft response  | \$175.00/hr | 0.40<br>\$70.00    |
| - SG            | Letter to client  | \$90.00/hr  | 0.20<br>\$18.00    |
| 7/7/2010 - SCN  | Review hot docs binder; Create outline for Discovery Requests and Depositions   | \$175.00/hr | 1.10<br>\$192.50   |
| - SG            | Arrange court reporter for Teigan deposition  | \$90.00/hr  | 0.20<br>\$18.00    |
| 7/8/2010 - SCN  | Prepare Deposition Outlines and Discovery Outlines  | \$175.00/hr | 4.50<br>\$787.50   |
| 7/9/2010 - SCN  | Prepare deposition outlines and discovery outlines; Research Jessica Nelson's case against Kirkpatrick from Federal Way   | \$175.00/hr | 4.20<br>\$735.00   |
| 7/12/2010 - SCN | Prepare for meeting with Win Taylor; Meet with Win Taylor; Review Discovery from criminal case; Draft discovery outlines/deposition preparation; Review letter from Ellen O'Hara - have forwarded to client                           | \$175.00/hr | 6.70<br>\$1,172.50 |
| 7/13/2010 - RAD | Call to client; Conference re: expert witness designations  | \$170.00/hr | 0.60<br>\$102.00   |
| - SCN           | Review transcripts from Overhoff Deposition and trial proceedings; Outline Discovery; Conference with R. Dunn; Email client (x3); Email Win Taylor (x3); C.V. and Retainer from Win; Forward C.V. to client; Review trial transcripts | \$175.00/hr | 8.10<br>\$1,417.50 |
| 7/14/2010 - SCN | Conference with R. Dunn   | \$175.00/hr | 0.20<br>\$35.00    |
| 7/15/2010 - RAD | Call to/from client; Conference re: discovery issues  | \$170.00/hr | 0.30<br>\$51.00    |
| - SG            | Conference with S. Nelson   | \$90.00/hr  | 0.30<br>\$27.00    |
| - SCN           | Strategy re: discovery with City; Review form of records request to be sent to Sheriff's office; Review trial transcripts to prepare for depositions and Discovery Requests/Motion to Compel  | \$175.00/hr | 2.90<br>\$507.50   |

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 FEDERAL TAX ID #1 1578231

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|                 |   | <u>Rate</u> | <u>Hours</u>      |
|-----------------|---|-------------|-------------------|
| 7/18/2010 - SCN | Review trial transcripts prep for Depositions/Motion to Compel/Discovery Requests   | \$170.00/hr | 4.50<br>\$765.00  |
| 7/18/2010 - RAD | Call to client  | \$170.00/hr | 0.20<br>\$34.00   |
| - SCN           | Review Fee Agreement; Conference with R. Dunn; Email Jay  | \$170.00/hr | 0.40<br>NO CHARGE |
| 7/19/2010 - SCN | Review trial transcripts; Prepare for depositions and discovery issues; Meeting with Mehring and R. Dunn; Telephone call with Erick West (x2); Telephone call with Jay Mehring; Email Jay; Draft letter/final to O'Hara re: Tlegen deposition | \$170.00/hr | 3.60<br>\$612.00  |
| - SG            | Revise and final letter to E. O'Hara  | \$90.00/hr  | 0.10<br>\$9.00    |
| - RAD           | Meeting with client   | \$170.00/hr | 1.50<br>\$255.00  |
| 7/20/2010 - SCN | Email from/to Jay   | \$170.00/hr | 0.20<br>\$34.00   |
| 7/21/2010 - SG  | Revise and final letter to E. O'Hara  | \$90.00/hr  | 0.20<br>\$18.00   |
| - SCN           | Draft letter to O'Hara (x2); Draft 30(b)(6) subjects; Conference with R. Dunn; Email draft letter to Jay; Final first letter to O'Hara and have sent; Review letter from O'Hara   | \$170.00/hr | 2.80<br>\$442.00  |
| 7/22/2010 - SCN | Conference with R. Dunn; Letter from O'Hara   | \$170.00/hr | 0.60<br>\$102.00  |
| 7/23/2010 - SCN | Email from Jay; Prepare discovery outline; Have working copies of pleadings made  | \$170.00/hr | 2.30<br>\$391.00  |
| 7/26/2010 - SCN | Review Defendants Memorandum to Dismiss/Summary Judgment, Shepardize case law   | \$170.00/hr | 3.80<br>\$646.00  |
| 7/27/2010 - SCN | Review Defendants Memorandum to Dismiss/Summary Judgment; Shepardize case law; Calendaring  | \$170.00/hr | 4.80<br>\$816.00  |
| 7/28/2010 - SCN | Review Defendants Memorandum to Dismiss/Summary Judgment; Shepardize case law; Draft/finalize two letters to O'Hara;  | \$170.00/hr | 5.80<br>\$986.00  |

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LAWYERS

Jay Mehring

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FEDERAL TAX ID # 15-1578231

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|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
|                 | Review domestic violence protection act;<br>Email from/to Jay (x2)   |             |                    |
| 7/28/2010 - SG  | Revise and final letters to E. O'Hara (x2)   | \$90.00/hr  | 0.30<br>\$27.00    |
| 7/29/2010 - SCN | Review Defendants Memorandum to Dismiss/Summary Judgment, Shepardize case law, Review City's domestic violence plan; Review I/A report and finding; Email from Jay   | \$170.00/hr | 6.50<br>\$1 105.00 |
| 7/30/2010 - SCN | Shepardize case law in Summary Judgment Brief; Compare Kirkpatrick Declaration to Testimony  | \$170.00/hr | 3.00<br>\$510.00   |
| 8/1/2010 - SCN  | Confer with R. Dunn; Review press releases and compare with Declaration of Kirkpatrick   | \$170.00/hr | 4.10<br>\$697.00   |
| 8/2/2010 - SCN  | Calendaring of City's Motion to Stay Discovery, Review Overhoff Declaration/Trial Testimony/Deposition; Review Tiegen Declaration/Trial Testimony; Email from Jay; Voicemail from Jay; Telephone call with Jay; Schedule meeting with Jay                              | \$170.00/hr | 4.00<br>\$680.00   |
| 8/3/2010 - SCN  | Confer with R. Dunn re: Summary Judgment hearing date; Contact Judge O'Connor's assistant; Telephone call with O'Hara (x2), Email to/from O'Hara; Voicemail from Jay Mehring; Telephone call with Jay Mehring; Email from/to Jay Mehring (x4); Review Protective Order | \$170.00/hr | 3.50<br>\$595.00   |
| 8/4/2010 - SCN  | Telephone call with Rocky T from City; Email from/to Rocky; Review Proposed Order and Motion; Review Exhibits to City's Motion for Summary Judgment; Cross reference Bobbie Overhoff and Lisa M testimony to Tiegen and Overhoff                                       | \$170.00/hr | 4.60<br>\$782.00   |
| 8/5/2010 - SG   | Prepare Amended Note for Deposition, Arrange court reporter  | \$90.00/hr  | 0.20<br>\$18.00    |
| - SCN           | Telephone call with Harper, File maintenance; Telephone call with Jay Mehring; Scheduling; Review Lisa testimony with Declarations in Support of Summary Judgment; Draft Response Brief; Review Judge Kozinski   | \$170.00/hr | 3.50<br>\$595.00   |

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 FEDERAL TAX ID 91-1576231

|                 |   | <u>Rate</u> | <u>Hours</u>     |
|-----------------|---|-------------|------------------|
| 8/6/2010 - SCN  | Telephone call with client; Draft Response to Summary Judgment; Have Discovery Request scanned and email to client; Email from client (x2)  | \$170.00/hr | 1.20<br>\$204.00 |
| 8/9/2010 - SCN  | Research 1983 claims; Email to/from City attorney (x3), Research defamation   | \$170.00/hr | 2.70<br>\$459.00 |
| 8/10/2010 - SCN | Email from/to client; email from/to City attorney re: deposition of Kirkpatrick/Overhoff; Research "public official" re: defamation; Review GR 15; Have hearing to seal scheduled for 8/10/10 | \$170.00/hr | 4.30<br>\$731.00 |
| 8/11/2010 - SCN | Research tort of outrage; Civil conspiracy; Negligence; Voicemail from Ellen O'Hara   | \$170.00/hr | 3.80<br>\$646.00 |
| 8/12/2010 - SCN | Review Defendants Note on Motion to Seal; Telephone call with Shiela O'Hara assistant re: deposition dates  | \$170.00/hr | 0.40<br>\$68.00  |
| 8/13/2010 - SCN | Email to O'Hara re: deposition dates  | \$170.00/hr | 0.20<br>\$34.00  |
| 8/15/2010 - SCN | Review Discovery questions; Draft Summary Judgment Response   | \$170.00/hr | 1.20<br>\$204.00 |
| 8/16/2010 - SCN | Draft response to Summary Judgment  | \$170.00/hr | 1.90<br>\$323.00 |
| 8/17/2010 - SCN | Email client; Draft Response to Summary Judgment; Telephone call with Ellen O'Hara; Have Deposition Notices prepared and sent; Calendaring  | \$170.00/hr | 2.10<br>\$357.00 |
| 8/18/2010 - SG  | Prepare Second Amended Notice of Deposition of T. Teigen; Prepare Notice of Deposition of A. Kirkpatrick  | \$90.00/hr  | 0.30<br>\$27.00  |
| - SCN           | Draft Response to Summary Judgment  | \$170.00/hr | 2.20<br>\$374.00 |
| 8/19/2010 - SG  | Re-arrange court reporter scheduling for Teigen and Kirkpatrick depositions   | \$90.00/hr  | 0.20<br>\$18.00  |
| - SCN           | Email from Mehring  | \$170.00/hr | 0.20<br>\$34.00  |
| 8/23/2010 - SCN | Voicemail from O'Hara re: scheduling; Conference with R. Dunn; Telephone call with Mehring  | \$170.00/hr | 3.60<br>\$612.00 |

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|                 |   | <u>Rate</u> | <u>Hours</u>       |
|-----------------|---|-------------|--------------------|
| 8/24/2010 - SCN | Research 1983 violations  | \$170.00/hr | 3.10<br>\$527.00   |
| 8/25/2010 - SCN | Draft Summary Judgment Response;<br>Research  | \$170.00/hr | 5.10<br>\$867.00   |
| 8/26/2010 - SCN | Draft Summary Judgment Response;<br>Review Jay's Responses to Discovery<br>Requests; Research wrongful withholding<br>response and draft; Review Seattle Times<br>article re: cop suit against city                   | \$170.00/hr | 5.00<br>\$850.00   |
| 8/27/2010 - SCN | Conference with R. Dunn   | \$170.00/hr | 0.20<br>\$34.00    |
| 8/28/2010 - SCN | Draft introduction and Statement of Facts;<br>Edit draft; Draft Jay's Declaration   | \$170.00/hr | 9.50<br>\$1,615.00 |
| - RAD           | Work on Response Brief and Declaration of<br>J. Mehring   | \$170.00/hr | 2.70<br>\$459.00   |
| 8/29/2010 - SCN | Draft Jay's Declaration, Email to client;<br>Telephone call to client   | \$170.00/hr | 4.30<br>\$731.00   |
| - RAD           | Work on Response Brief and Declaration  | \$170.00/hr | 2.50<br>\$425.00   |
| 8/30/2010 - SCN | Email from client; Edit client Declaration per<br>client email; Conference with R. Dunn; Draft<br>S. Nelson Declaration; Telephone call with<br>Rocky T.; Email to/from Rocky T.; Draft<br>statement of material fact | \$170.00/hr | 5.80<br>\$986.00   |
| - RAD           | Conference re: Response Brief issues;<br>Work on Response Brief   | \$170.00/hr | 2.40<br>\$408.00   |
| 8/31/2010 - SG  | Re-draft Declaration of S. Nelson; Draft<br>Statement of Material Facts   | \$90.00/hr  | 1.50<br>\$135.00   |
| - SCN           | Edit Jay Declaration; Draft Statement of<br>Facts; Edit S. Nelson Declaration;<br>Review/pull exhibits  | \$170.00/hr | 8.80<br>\$1,496.00 |
| 9/1/2010 - SG   | Revise Statement of Facts; Revise<br>Declaration of S. Nelson; Work with exhibits   | \$90.00/hr  | 3.70<br>\$333.00   |
| - RAD           | Redraft/Final Summary Judgment Brief and<br>Statement of Facts and Declaration of<br>Mehring; Conference re Summary<br>Judgment issues; Meeting with client   | \$170.00/hr | 7.70<br>\$1,309.00 |

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|                |  | <u>Rate</u> | <u>Hours</u>       |
|----------------|--|-------------|--------------------|
| 9/1/2010 - SCN | Conference with R. Dunn; Telephone call with client; Email client; Edit S. Nelson Declaration; Edit Mehring Declaration; Edit Brief; Edit Statement of Facts; Pull remaining exhibits; Final bill for filing; Draft Discovery Responses; Conference with R. Dunn re: Kirkpatrick deposition  | \$170.00/hr | 7.90<br>\$1,343.00 |
| 9/2/2010 - SG  | Revise and final Motion for CR 56(f) Continuance, Declaration of S. Nelson; Revise Answers to Discovery  | \$90.00/hr  | 0.90<br>\$81.00    |
| - RAD          | Final Discovery Responses  | \$170.00/hr | 1.10<br>\$187.00   |
| - SCN          | Draft Discovery Responses; Conference with R. Dunn; Draft 56(f) Motion/Memorandum and Declaration; Review correspondence; Voicemail from City attorney office  | \$170.00/hr | 6.30<br>\$901.00   |
| 9/3/2010 - MCO | Review and final letter to O'Hara; Final Discovery Responses and assemble for service  | \$90.00/hr  | 0.30<br>\$27.00    |
| - SCN          | Edit Response to Discovery; Draft letter to opposing; Voicemail for client; Telephone call with client; Meet with client; Final Discovery Responses  | \$170.00/hr | 3.30<br>\$561.00   |
| 9/7/2010 - SCN | Pull documents for Kirkpatrick deposition; Review Declaration in Comparison with Court Testimony; Mark redactions for attorney/client doctor/patient privilege in personal journals; Contact Cleve Stockmeyer re: similar case in Seattle; Telephone call with Cleve; Review pleadings on Eklund v City of Seattle   | \$170.00/hr | 8.00<br>\$1,360.00 |
| - SG           | Redact client's documents; Draft privilege log   | \$80.00/hr  | 1.40<br>\$126.00   |
| 9/8/2010 - SCN | Review Pastor Creach press release; Watch raw footage of Kirkpatrick; Telephone call with Ellen (x3); Voicemail for Jay Mehring; Conference with R. Dunn; Conference with court reporter re: transcript of raw footage; Telephone call with Jay (x2); Email from Cleve Stockmeyer; Have bated discovery sent over; Email from Ellen O'Hara; Email from Judge O'Connor's JA | \$170.00/hr | 5.90<br>\$1,003.00 |

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|                 |  | <u>Rate</u> | <u>Hours</u>        |
|-----------------|--|-------------|---------------------|
|                 | Ashley; Finalize deposition outline for Kirkpatrick; Left voicemail for Jay  |             |                     |
| 9/8/2010 - SG   | Revise and final privilege log   | \$90.00/hr  | 0.40<br>\$36.00     |
| 9/9/2010 - SCN  | Prepare for Kirkpatrick deposition; Attend deposition; Meet with client; Telephone call with Wultrich (x2); Telephone call with Chris Vick; Telephone call with Captain Braun; Conference with R. Dunn; Telephone call with Snover; Telephone call with Ellen; Reconvene deposition; Email from court; Telephone call with Jay Mehring | \$170.00/hr | 8.70<br>\$1,479.00  |
| - RAD           | To deposition of A. Kirkpatrick; Meeting with client; Calls to Guild   | \$170.00/hr | 12.90<br>\$2,193.00 |
| - SG            | Draft Amended Complaint  | \$90.00/hr  | 0.20<br>\$18.00     |
| 9/10/2010 - RAD | Conference re: discovery issues  | \$170.00/hr | 1.00<br>\$170.00    |
| - SCN           | Telephone call from Jay Mehring; Voicemail from Ellen O'Hara; Email to/from Ellen (x3); Conference with R. Dunn; Email Snover Reporting; Review Discovery and pull documents for Teigen deposition; Telephone call with Court Reporter; Email from/to Jody at Snover   | \$170.00/hr | 5.00<br>\$850.00    |
| 9/12/2010 - RAD | Deposition preparation   | \$170.00/hr | 5.30<br>\$901.00    |
| - SCN           | Conference with R. Dunn; Prepare for Teigen deposition   | \$170.00/hr | 2.00<br>\$340.00    |
| 9/13/2010 - SCN | Prepare for Teigen deposition; Conference with R. Dunn; Meet/conference with R. Dunn and Jay; Deposition; Research Teigen/Gauthun Facebook/MySpace pages; Voicemail from Krem2   | \$170.00/hr | 7.20<br>\$1,224.00  |
| - RAD           | Deposition preparation; Meeting with client; Deposition of Teigen  | \$170.00/hr | 9.50<br>\$1,615.00  |
| 9/14/2010 - SCN | Draft CR 56 Reply; Review discovery timeline; Email to/from Ellen O'Hara; Edit Supplemental Declaration; Telephone call with Ellen O'Hara; Email from/to Ellen O'Hara; Review Notice of CR 35 Exam; Review Motion/Memorandum to Compel   | \$170.00/hr | 3.00<br>\$510.00    |

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|                 |   | <u>Rate</u> | <u>Hours</u>     |
|-----------------|---|-------------|------------------|
|                 | Exam; Conference with R. Dunn; Review CR 35 case law/rule notes; Review Krem2 report and comments   |             |                  |
| 9/14/2010 - SG  | Revise Reply to CR 56(f) Motion; Draft and final Supplemental Declaration of S. Nelson  | \$90.00/hr  | 0.60<br>\$54.00  |
| - RAD           | Emails re: CR 35 issues; Conference re: CR 35 matters   | \$170.00/hr | 1.00<br>\$170.00 |
| 9/15/2010 - SG  | Revise and final reply to CR 56(f) Motion and Declaration of S. Nelson; Prepare for filing  | \$90.00/hr  | 0.40<br>\$36.00  |
| - SCN           | Final Reply   | \$170.00/hr | 0.20<br>\$34.00  |
| 9/16/2010 - RAD | Conference re: motion arguments   | \$170.00/hr | 2.40<br>\$408.00 |
| - SCN           | Telephone call with Jay; Email from Ashley reschedule 9-17 hearing; Review Defendants' Notice of IME CR 35; Conference with R. Dunn; Email Ellen O'Hara; Prepare for hearing  | \$170.00/hr | 2.30<br>\$391.00 |
| 9/17/2010 - RAD | Hearing preparation; To Court for Hearing; Meeting with client  | \$170.00/hr | 2.40<br>\$408.00 |
| - WDM           | Conference with S. Nelson regarding Summary Judgment Hearing and continuance issues   | \$90.00/hr  | 0.50<br>\$95.00  |
| - SCN           | Prepare for hearing; Outline CR 56 argument and Summary Judgment Argument; Review deposition notes; Oral argument; Conference with R. Dunn; Forward email from court reporter to R. Dunn; Review press release on Mehring | \$170.00/hr | 5.70<br>\$969.00 |
| 9/19/2010 - RAD | Review documents for deposition preparation   | \$170.00/hr | 2.20<br>\$374.00 |
| - SCN           | Review CR 35 civil procedure and commentary   | \$170.00/hr | 0.20<br>\$34.00  |
| 9/20/2010 - MCO | Telephone call from O'Hara's assistant; Conference with R. Dunn and S. Nelson re: same  | \$90.00/hr  | 0.10<br>\$9.00   |
| - SCN           | Review Proposed Order re: CR 56(f); Voicemail from Ellen O'Hara re: discovery master; Conference with R. Dunn; Email  | \$170.00/hr | 2.40<br>\$408.00 |

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|                 |   | Rate        | Hours            |
|-----------------|---|-------------|------------------|
|                 | Proposed Order; Email from/to Ellen re: deposition dates and Summary Judgment date (x9); Calendar deposition dates  |             |                  |
| 9/20/2010 - SG  | Draft Order Granting CR 56(f) Motion; Telephone call with S. Oropeza; Miscellaneous emails  | \$90.00/hr  | 0.40<br>\$36.00  |
| 9/21/2010 - SCN | Review 9/17 letter to Jay; Conference with R. Dunn; Telephone call with Jay (x2); Email from/to City Attorney (x4); Have Deposition Notice/Subpoenas drafted/sent; Review Summary Judgment Notice from City; Scheduling depositions; Research CR 45 notice requirements | \$170.00/hr | 2.40<br>\$408.00 |
| - RAD           | Conference re: deposition matters   | \$170.00/hr | 0.30<br>\$51.00  |
| - SG            | Draft Notice of Continuance of Kirkpatrick Deposition; Subpoenas to Arleth and Nicks  | \$90.00/hr  | 0.70<br>\$63.00  |
| 9/22/2010 - SCN | Email from City; Review Notice of Deposition; Calendaring; Review CR 26; Research protective order case law; Draft Memorandum for Protective Order  | \$170.00/hr | 2.20<br>\$374.00 |
| - RAD           | Telephone call with Spokesman Review; Conference re: Discovery issues; Redraft Memorandum re: Protective Order  | \$170.00/hr | 2.10<br>\$357.00 |
| - SG            | Draft Rebuttal Witness List   | \$90.00/hr  | 0.20<br>\$18.00  |
| 9/23/2010 - RAD | Final pleadings re: Protective Order  | \$170.00/hr | 2.20<br>\$374.00 |
| - SG            | Review and edit Declaration of S. Nelson  | \$90.00/hr  | 0.40<br>\$36.00  |
| - SCN           | Draft Motion for Protective Order; Edit Memorandum for Protective Order; Conference with R. Dunn; Draft/edit Declaration; Volcemail from Jay; Email to Jay  | \$170.00/hr | 3.40<br>\$578.00 |
| 9/24/2010 - SG  | Revise and final Motion, Declaration of S. Nelson and Memorandum for Protective Order; Prepare Note for Hearing; Telephone calls and emails with Discovery Master's office and City Attorney's office to arrange Hearing  | \$90.00/hr  | 1.40<br>\$126.00 |

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 FEDERAL TAX ID # 1578231

|                 |   | <u>Rate</u> | <u>Hours</u>     |
|-----------------|---|-------------|------------------|
| 9/24/2010 - SCN | Final pleadings; Review Discovery Master Order; Conference with R. Dunn; Pull Exhibits; Telephone call with Mehring; Conference with Mehring; Have pleadings sent to Mr. Cronin and City Attorney; Review email correspondence from City Attorney; Scheduling Protective Order Hearing; Email from Cronin's office; Email re: depositions   | \$170.00/hr | 2.50<br>\$425.00 |
| 9/25/2010 - RAD | E-mails re: Discovery issues  | \$170.00/hr | 0.40<br>\$68.00  |
| 9/27/2010 - SCN | Scheduling  | \$170.00/hr | 0.20<br>\$34.00  |
| - SG            | Draft Rebuttal Witness List   | \$90.00/hr  | 0.20<br>\$18.00  |
| 9/28/2010 - RAD | Conference call to T. Cronin; Conference re: discovery issues   | \$170.00/hr | 1.80<br>\$306.00 |
| - SCN           | Conference call with Cronin; Resend Motion for Protective Order to City Attorney; Voicemail from City Attorney re: depositions; Verify Cronin received Motion for Protective Order; Email from City Attorney (x2); Have Notice of Nicks Deposition sent out; Text messages from Jay re: Lisa meeting; Have Rebuttal Witness List finalized and sent; Remote Hearing on Protective Order | \$170.00/hr | 2.20<br>\$374.00 |
| - SG            | Order Transcript of Hearing; Email re: Hearing before Discovery Master; Prepare Amended Note for Hearing  | \$90.00/hr  | 0.50<br>\$45.00  |
| 9/29/2010 - SCN | Tim Cronin email re: scheduling; City Attorney emails; Draft email to Cronin's office; Have copies of Protective Order pleadings hand delivered to Ellen's office; Text from Jay; Email Jay; Email from Ellen's office  | \$170.00/hr | 1.80<br>\$306.00 |
| - SG            | Miscellaneous emails re: hearing dates; Draft and final letter to E. O'Hara   | \$90.00/hr  | 0.50<br>\$45.00  |
| 10/1/2010 - SCN | Review City's pleadings; Correspondence from Cronin; Privilege redaction from client documents; Review medical release forms and research HIPPA requirements  | \$170.00/hr | 1.80<br>\$306.00 |

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|              |       | <u>Rate</u>  | <u>Hours</u>                      |
|--------------|-------|--|-----------------------------------|
| 10/4/2010 -  | SCN   | Schedule Hearing; Email R. Dunn; Set hearing date with Cronin  | \$170.00/hr<br>0.50<br>\$85.00    |
|              | - SG  | Telephone call and email with discovery master's assistant   | \$90.00/hr<br>0.20<br>\$18.00     |
| 10/5/2010 -  | SG    | Arrange court reporter for Kirkpatrick deposition  | \$90.00/hr<br>0.20<br>\$18.00     |
|              | - RAD | Call from client; Conference re: discovery issues  | \$170.00/hr<br>0.90<br>\$153.00   |
|              | - SCN | Review correspondence from City; Conference with R. Dunn; Draft Response to City's Motion for CR 35 examination  | \$170.00/hr<br>2.80<br>\$476.00   |
| 10/6/2010 -  | SCN   | Draft Response to CR 35 Motion; Research; Draft Reply to Motion for Protective Order; Draft Declaration; Draft email to Ellen re: Gauthun/Lindquist Depositions; Telephone call with expert on child witnesses attorney David Marshall; Response to Defendants' Motion to Amend Protective Order | \$170.00/hr<br>6.60<br>\$1,122.00 |
|              | - SG  | Review and edit Response; Draft Declaration of S. Nelson   | \$90.00/hr<br>1.10<br>\$99.00     |
| 10/7/2010 -  | SCN   | Draft/edit pleadings on Reply to Motion for Protective Order and Response Motion CR 35; Edit medical releases; Review discovery; Redact discovery; Email client; Telephone call with client  | \$170.00/hr<br>6.20<br>\$1,054.00 |
|              | - SG  | Draft medical authorizations; Review and edit Reply, Response and Declaration of S. Nelson to Discovery Master Motions   | \$90.00/hr<br>2.40<br>\$216.00    |
| 10/8/2010 -  | SCN   | Edit Declaration; Edit Reply re: Protective Order; Edit Response re: CR 35; Telephone call with Jay; Email Jay; Review City Motion to Amend Existing Protective Order; Conference with R. Dunn   | \$170.00/hr<br>5.10<br>\$867.00   |
|              | - SG  | Redact privileged documents; Revise and final Response, Declaration of S. Nelson and Reply   | \$90.00/hr<br>3.20<br>\$288.00    |
| 10/9/2010 -  | RAD   | Work on deposition preparation   | \$170.00/hr<br>2.00<br>\$340.00   |
| 10/10/2010 - | SCN   | Conference with R. Dunn; Pull Kirkpatrick Transcript   | \$170.00/hr<br>0.80<br>\$138.00   |

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|                  |   | <u>Rate</u> | <u>Hours</u>       |
|------------------|---|-------------|--------------------|
| 10/10/2010 - RAD | Deposition preparation  | \$170.00/hr | 8.20<br>\$1,054.00 |
| 10/11/2010 - SG  | Deposition Exhibits; Medical releases   | \$90.00/hr  | 0.30<br>\$27.00    |
| - RAD            | Deposition preparation; Deposition of A. Kirkpatrick; Meeting with client   | \$170.00/hr | 7.30<br>\$1,241.00 |
| - SCN            | Prepare for Kirkpatrick deposition; Review Kirkpatrick Responses to Discovery; Review policy/procedure manual; Conference with R. Dunn; Email City re: deposition dates and availability (x2); Pull medical releases for Jay's review; Conference with client and R. Dunn; Prepare for Nick's Deposition - pull Discovery Documents; Meet with client to review medical releases and pending Discovery Motions; Review Lindquist testimony; Review Pittz testimony; Email client (x2); Review Bugbee notes on Pittz | \$170.00/hr | 8.90<br>\$1,173.00 |
| 10/12/2010 - RAD | Hearing preparation; To Tim Cronin's office for Hearing; Meeting with client; Call to L. Mehring; Conference re: discovery issues   | \$170.00/hr | 3.30<br>\$561.00   |
| - SCN            | Conference with R. Dunn re: Hearing and Motions; Strategize with R. Dunn; Pull documents and prepare for Nick's deposition; Review City's medical release forms; Conference with R. Dunn re: hearing and meeting with Dr. Palmer; Pull documents for Overhoff Deposition  | \$170.00/hr | 6.10<br>\$1,037.00 |
| - SG             | Draft and final letter to E. O'Hara   | \$90.00/hr  | 0.20<br>\$18.00    |
| 10/13/2010 - SCN | Conference with R. Dunn; Pull documents for Nicks and Overhoff Depositions; Review privilege log; Email from/to City Attorney; Email from client; Telephone call with Jay; Voicemail for Dr. Palmer; Telephone call with Dr. Palmer; Scheduling depositions   | \$170.00/hr | 5.40<br>\$918.00   |
| - RAD            | Deposition preparation  | \$170.00/hr | 4.50<br>\$765.00   |
| - MCO            | Emails to/from Vick re: transcript of Kirkpatrick   | \$90.00/hr  | 0.10<br>\$9.00     |
| - SG             | Draft and final letter to E. O'Hara   | \$90.00/hr  | 0.20<br>\$18.00    |

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|                  |   | <u>Rate</u> | <u>Hours</u>       |
|------------------|---|-------------|--------------------|
| 10/14/2010 - SCN | Prepare for deposition of Nicks; Nicks Deposition; Meet with Dr. Palmer; Telephone call with Dr. Palmer; Draft two letters to Dr. Palmer; Conference with R. Dunn; Conference with client; Strategize re: demand letter | \$170.00/hr | 5.50<br>\$935.00   |
| - RAD            | Deposition preparation; Deposition of J. Hicks; Meeting with client   | \$170.00/hr | 8.30<br>\$1,411.00 |
| - MCO            | Emails to/from Vick re: transcript of Kirkpatrick   | \$90.00/hr  | 0.10<br>\$9.00     |
| - SG             | Deposition Exhibits; Revise and final letters to D. Palmer (x2)   | \$90.00/hr  | 0.90<br>\$81.00    |
| 10/15/2010 - SCN | Review Kirkpatrick deposition transcript; Draft Second Set of Interrogatories and Requests for Production of Documents for City and Kirkpatrick; Review privilege log and have discovery sent                           | \$170.00/hr | 2.50<br>\$425.00   |
| - SG             | Re-draft and final Second Set of Discovery to Kirkpatrick; Revise and final Second Set of Discovery to Telgen; Letter to E. O'Hara; Revise and final privilege log  | \$90.00/hr  | 0.90<br>\$81.00    |
| 10/18/2010 - RAD | Emails to/from T. Cronin; Email from E. O'Hara; Email to client   | \$170.00/hr | 1.00<br>\$170.00   |
| 10/19/2010 - RAD | Emails to/from T. Cronin; Call From E. O'Hara   | \$170.00/hr | 0.40<br>\$68.00    |
| 10/20/2010 - RAD | Call to E. O'Hara   | \$170.00/hr | 0.20<br>\$34.00    |
| 10/21/2010 - SG  | Prepare Notice of Deposition of Overhoff and Subpoenas to Barkley, Roberts and Arleth   | \$90.00/hr  | 0.70<br>\$63.00    |
| 10/22/2010 - RAD | Calls to client; calls to E. O'Hara; Review Discovery Responses; Call to Dr. Dennette Palmer  | \$170.00/hr | 1.70<br>\$289.00   |
| 10/25/2010 - RAD | Review Discovery Log documents; Email to E. O'Hara  | \$170.00/hr | 1.40<br>\$238.00   |
| - SG             | Arrange court reporter for depositions  | \$90.00/hr  | 0.20<br>\$18.00    |
| 10/26/2010 - RAD | Phone call with client; Conference re: discovery issues   | \$170.00/hr | 1.00<br>\$170.00   |

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 LAWYERS

Jay Mehring

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A PROFESSIONAL SERVICE CORPORATION  
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 FEDERAL TAX ID 91-1578281

|                  |  | <u>Rate</u> | <u>Hours</u>       |
|------------------|--|-------------|--------------------|
| 10/27/2010 - SG  | Cancel depositions (x2); Email to S. Oropeza re: available dates   | \$90.00/hr  | 0.30<br>\$27.00    |
| 10/29/2010 - RAD | Work on Deposition Scheduling  | \$170.00/hr | 0.70<br>\$119.00   |
| 11/1/2010 - RAD  | Email to/from client; Deposition preparation   | \$170.00/hr | 7.20<br>\$1,224.00 |
| 11/2/2010 - RAD  | Deposition of B. Roberts; Meeting with client; Call to client  | \$170.00/hr | 6.80<br>\$1,168.00 |
| 11/3/2010 - RAD  | Meeting with Lisa Mehring; Call to client  | \$170.00/hr | 1.30<br>\$221.00   |
| 11/4/2010 - RAD  | Deposition preparation of Overhoff   | \$170.00/hr | 5.30<br>\$901.00   |
| 11/5/2010 - SG   | Draft Subpoena Duces Tecum to Shannon Deonier  | \$90.00/hr  | 0.30<br>\$27.00    |
| - RAD            | Meeting with client; Deposition preparation and Deposition of Overhoff   | \$170.00/hr | 4.40<br>\$748.00   |
| 11/8/2010 - SG   | Draft and final Subpoena Duces Tecum to M. Leavel; Final Subpoena Duces Tecum to Shannon Deonier   | \$90.00/hr  | 0.30<br>\$27.00    |
| 11/9/2010 - SG   | Draft and final Subpoena to Khris Thompson; Draft and final letter to E. O'Hara; Arrange for service of Subpoena   | \$90.00/hr  | 0.50<br>\$45.00    |
| 11/15/2010 - RAD | Email to/from E. Oars; Emails to T. Cronin; Hearing with T. Cronin; Email to client  | \$170.00/hr | 1.80<br>\$306.00   |
| - SG             | Prepare Amended Subpoena   | \$90.00/hr  | 0.20<br>\$18.00    |
| 11/16/2010 - SCN | Review Overhoff, Nicka deposition transcripts; Conference with R. Dunn; Have Subpoena Duces Tecum served at Paine Hamblin; Review recent correspondence with defense counsel; Calendar Response to Defendants Motion for Summary Judgment  | \$170.00/hr | 4.20<br>\$714.00   |
| 11/17/2010 - SCN | Review last half Nicka deposition; Review Roberts deposition; Mark up Kirkpatrick deposition for Summary Judgment Response; Conference with R. Dunn re: Subpoena Duces Tecum on Paine Hamblin; Conference with Marcus Lawson re: contact with sheriff's department via email and | \$170.00/hr | 4.60<br>\$782.00   |

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 FEDERAL TAX ID #1-578231

|                  |   | <u>Rate</u> | <u>Hours</u>       |
|------------------|---|-------------|--------------------|
|                  | telephone; Conference with R. Dunn re: Lisa Mehring Paine Hamblin attorney file   |             |                    |
| 11/18/2010 - SCN | Review Tiegen deposition for Supplemental Summary Judgment Response; Telephone call with client; Calendaring  | \$170.00/hr | 2.80<br>\$478.00   |
| 11/19/2010 - RAD | Emails to/from E. O'Hara; Call to/from client; Conference re: discovery issues  | \$170.00/hr | 1.20<br>\$204.00   |
| - SG             | Revise and final Jury Demand; Prepare for filing  | \$90.00/hr  | 0.20<br>\$18.00    |
| - SCN            | Prepare Supplemental Response to Summary Judgment; Conference with R. Dunn; Telephone call with client; Review Mehring emails; Review deposition transcripts for Supplemental Response Summary Judgment   | \$170.00/hr | 2.20<br>\$374.00   |
| 11/20/2010 - SCN | Prepare Supplemental Response to Summary Judgment; Review deposition transcripts for Supplemental Response Summary Judgment   | \$170.00/hr | 2.50<br>\$425.00   |
| 11/21/2010 - RAD | Deposition preparation  | \$170.00/hr | 3.20<br>\$544.00   |
| - SCN            | Prepare Supplemental Response to Summary Judgment; Prepare for Thompson deposition; Conference with R. Dunn   | \$170.00/hr | 3.50<br>\$595.00   |
| 11/22/2010 - RAD | Deposition preparation; Meeting with client; Deposition of K. Thompson  | \$170.00/hr | 8.20<br>\$1,394.00 |
| - SG             | Telephone call with Court   | \$90.00/hr  | 0.10<br>\$9.00     |
| - SCN            | Prepare for Thompson deposition; Pull exhibits; Voicemail for JA Ashley Kelley; Conference with R. Dunn; Review case schedule order and rule re: jury demand; Scheduling with court and opposing Summary Judgment Motion; Deposition of K. Thompson | \$170.00/hr | 8.80<br>\$1,156.00 |
| 11/23/2010 - RAD | Call from client; Conference re: brief issues   | \$170.00/hr | 1.00<br>\$170.00   |

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 FEDERAL TAX ID 91-1878231

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|                  |   | <u>Rate</u> | <u>Hours</u>     |
|------------------|---|-------------|------------------|
| 11/23/2010 - SCN | Telephone call with Ellen re: Summary Judgment; Email court re: scheduling Summary Judgment; Email from client "most dangerous"; Review recent discovery  | \$170.00/hr | 2.20<br>\$374.00 |
| 11/24/2010 - RAD | Call to L. Mehring; Call to client; Conference re: pleading issues  | \$170.00/hr | 1.10<br>\$187.00 |
| - SCN            | Review Discovery Responses; Conference with R. Dunn; Telephone call with Jay  | \$170.00/hr | 2.70<br>\$459.00 |
| 11/27/2010 - SCN | Outline; Draft; Edit Supplemental Summary Judgment Response   | \$170.00/hr | 3.50<br>\$595.00 |
| 11/28/2010 - SCN | Draft Supplemental Response to Defendants Summary Judgment Memorandum   | \$170.00/hr | 2.00<br>\$340.00 |
| 11/29/2010 - SCN | Edit Supplemental Response to Defendants Motion for Summary Judgment; Draft Declaration; Pull exhibits; Cite to discovery; Review case law; Telephone call with Ellen O'Hara; Email with Ellen; Conference with R. Dunn | \$170.00/hr | 5.50<br>\$935.00 |
| - SG             | Revise Declaration of R. Dunn; Assemble exhibits; Prepare Supplemental Response and Declaration for filing  | \$90.00/hr  | 0.50<br>\$45.00  |
| 11/30/2010 - RAD | Call from client; Conference re: pleading and Hearing issues  | \$170.00/hr | 0.80<br>\$136.00 |
| - SCN            | Review documents from Paine Hamblen; Telephone call with Jay; Conference with R. Dunn   | \$170.00/hr | 1.80<br>\$306.00 |
| 12/1/2010 - SCN  | Telephone call with J. Snover re: transcribing tapes; Conference with R. Dunn   | \$170.00/hr | 0.40<br>\$68.00  |
| 12/2/2010 - RAD  | Call from client; Call to L. Mehring; Final Response Brief  | \$170.00/hr | 1.40<br>\$238.00 |
| - SCN            | Conference with R. Dunn; Review recent appellate case; Start outlining Summary Judgment argument; Review Aitchison "the rights of law enforcement officers" and cited case law  | \$170.00/hr | 2.40<br>\$408.00 |
| 12/3/2010 - SG   | Draft Trial Management Joint Report, Exhibit List, Witness List and ER 904  | \$90.00/hr  | 1.50<br>\$135.00 |

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 FEDERAL TAX ID #1-579231

|                  |   | <u>Rate</u> | <u>Hours</u>     |
|------------------|---|-------------|------------------|
| 12/3/2010 - SCN  | Conference with R. Dunn; Review recent appellate case; Start outlining Summary Judgment argument; Review Aitchison "the rights of law enforcement officers" and cited case law  | \$170.00/hr | 2.40<br>\$408.00 |
| 12/6/2010 - SCN  | Outlining Summary Judgment argument. Review Aitchison "the rights of law enforcement officers" and cited case law   | \$170.00/hr | 2.60<br>\$442.00 |
| 12/7/2010 - RAD  | Call from client; Conference re: Hearing issues   | \$170.00/hr | 0.80<br>\$136.00 |
| - SCN            | Outline Summary Judgment Argument; Review Kirkpatrick transcript in-service 2007; Outline chapter 4 Aitchison book; Create timeline of events for Summary Judgment Argument; Conference with R. Dunn; Outline Defendants Summary Judgment | \$170.00/hr | 5.50<br>\$935.00 |
| 12/8/2010 - RAD  | Hearing preparation; Emails from/to Court   | \$170.00/hr | 1.00<br>\$170.00 |
| - SG             | Revise and final Errata, Prepare for filing   | \$90.00/hr  | 0.30<br>\$27.00  |
| - SCN            | Outlining Summary Judgment Argument; Conference with R. Dunn; Email from Court rescheduling (x2); Telephone call with Jay; Forward emails to client   | \$170.00/hr | 3.50<br>\$595.00 |
| 12/9/2010 - SCN  | Review CR 35; Email to/from client; Review recent discovery; Conference with N. Kovarik   | \$170.00/hr | 1.50<br>\$255.00 |
| - RAD            | Emails from client  | \$170.00/hr | 0.30<br>\$51.00  |
| 12/10/2010 - SCN | Conference with R. Dunn; Review recent discovery; Strategize  | \$170.00/hr | 0.50<br>\$85.00  |
| 12/14/2010 - SCN | Email from/to client  | \$170.00/hr | 0.20<br>\$34.00  |
| 12/27/2010 - RAD | Review psychological report; Emails to/from the City; Conference regarding discovery issues   | \$170.00/hr | 0.70<br>\$119.00 |

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A PROFESSIONAL SERVICE CORPORATION  
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 FEDERAL TAX ID 81-1578231

|                                    |   | <u>Rate</u> | <u>Hours</u>     |
|------------------------------------|---|-------------|------------------|
| 12/27/2010 - SCN                   | Email from client; Email Ellen re: CR 35 defense exam (x2); Review physician's report; Email report to client (x2); Conference with R. Dunn | \$170.00/hr | 1.80<br>\$272.00 |
| 12/28/2010 - SCN                   | Email from client; Telephone call with client; Email Erin (x2); Review physicians report; Conference with R. Dunn                           | \$170.00/hr | 1.80<br>\$306.00 |
| For professional services rendered |   | 598.80      | \$99,350.00      |

Additional Charges :

|  |     | <u>Qty/Price</u> |        |
|--|-----|------------------|--------|
| 1/4/2010 - Service of Process Fee-Associated Messenger Service, Inc. | 1   | 45.00            | 45.00  |
| 1/8/2010 - Photocopy Charge(s)                                       | 621 | 0.20             | 124.20 |
| 1/12/2010 - Photocopy Charge(s)                                      | 4   | 0.20             | 0.80   |
| 1/13/2010 - Postage Charge(s)  | 1   | 1.05             | 1.05   |
| 1/15/2010 - Photocopy Charge(s)                                      | 21  | 0.20             | 4.20   |
| 2/9/2010 - Westlaw-Legal Research                                    | 1   | 101.41           | 101.41 |
| 2/10/2010 - Photocopy Charge(s)                                      | 319 | 0.20             | 63.80  |
| - Westlaw-Legal Research..   | 1   | 70.00            | 70.00  |
| 2/11/2010 - Postage Charge(s)  | 1   | 5.73             | 5.73   |
| 3/2/2010 - Westlaw-Legal Research                                    | 1   | 11.29            | 11.29  |
| 3/10/2010 - Photocopy Charge(s)                                      | 2   | 0.20             | 0.40   |
| 3/11/2010 - Postage Charge(s)  | 1   | 1.32             | 1.32   |

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 FEDERAL TAX ID 91-157823

|                                    | <u>Qty/Price</u> | <u>Amount</u> |
|------------------------------------|------------------|---------------|
| 4/6/2010 - Photocopy Charge(s)     | 7<br>0.20        | 1.40          |
| 4/8/2010 - Photocopy Charge(s)     | 15<br>0.20       | 3.00          |
| 4/13/2010 - Postage Charge(s)      | 1<br>2.98        | 2.98          |
| 5/10/2010 - Photocopy Charge(s)    | 81<br>0.20       | 16.20         |
| 6/8/2010 - Photocopy Charge(s)     | 363<br>0.20      | 72.60         |
| - Photocopy Charge(s)              | 2<br>0.20        | 0.40          |
| - Postage Charge(s)                | 1<br>8.48        | 8.48          |
| - Photocopy Charge(s)              | 32<br>0.20       | 6.40          |
| 7/9/2010 - Long Distance Charge(s) | 1<br>0.62        | 0.62          |
| 7/12/2010 - Photocopy Charge(s)    | 108<br>0.20      | 21.60         |
| 7/13/2010 - Photocopy Charge(s)    | 15<br>0.20       | 3.00          |
| 7/14/2010 - Postage Charge(s)      | 1<br>1.49        | 1.49          |
| 8/12/2010 - Westlaw-Legal Research | 1<br>91.64       | 91.64         |
| - Long Distance Charge(s)          | 1<br>0.36        | 0.36          |
| - Photocopy Charge(s)              | 1,038<br>0.20    | 207.20        |
| - Photocopy Charge(s)              | 2<br>0.20        | 0.40          |
| 8/13/2010 - Postage Charge(s)      | 1<br>9.04        | 9.04          |

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 FEDERAL TAX ID 91-1578231

|  | <u>Qty/Price</u> | <u>Amount</u> |
|--|------------------|---------------|
| 9/2/2010 - Westlaw-Legal Research  | 1<br>145.72      | 145.72        |
| 9/9/2010 - Long Distance Charge(s)                                       | 1<br>1.78        | 1.78          |
| - Photocopy Charge(s)  | 3,169<br>0.20    | 633.80        |
| 9/10/2010 - Photocopy Charge(s)  | 389<br>0.20      | 77.80         |
| 10/1/2010 - Westlaw-Legal Research                                       | 1<br>48.21       | 48.21         |
| 10/4/2010 - Deposition Expense-Snover Realtime Reporting                 | 1<br>948.45      | 948.45        |
| 10/11/2010 - Photocopy Charge(s)   | 169<br>0.20      | 33.80         |
| - Photocopy Charge(s)  | 1,978<br>0.20    | 395.60        |
| 10/12/2010 - Long Distance Charge(s)                                     | 1<br>2.56        | 2.56          |
| - Deposition Expense - Snover Realtime Reporting                         | 1<br>963.45      | 963.45        |
| 10/13/2010 - Postage Charge(s)   | 1<br>12.87       | 12.87         |
| 10/27/2010 - Service of Process Fee-Eastern Washington Attorney Services | 1<br>40.00       | 40.00         |
| 11/1/2010 - Westlaw-Legal Research                                       | 1<br>134.35      | 134.35        |
| - Deposition Expense-Snover Realtime Reporting                           | 1<br>868.25      | 868.25        |
| 11/2/2010 - Fax Charge(s)  | 9<br>1.00        | 9.00          |
| - Photocopy Charge(s)  | 1<br>0.20        | 0.20          |
| 11/4/2010 - Photocopy Charge(s)  | 875<br>0.20      | 175.00        |

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 FEDERAL TAX ID 91-1578231

|  | <u>Qty/Price</u> | <u>Amount</u>       |
|--|------------------|---------------------|
| 11/4/2010 - Professional Services Rendered-Mullin, Cronin, Casey & Blair, PS | 1<br>888.25      | 888.25              |
| 11/7/2010 - Long Distance Charge(s)  | 1<br>0.31        | 0.31                |
| 11/11/2010 - Photocopy Charge(s)-Sodemann Document Services                  | 1<br>139.24      | 139.24              |
| - Deposition Expense-Snover Realtime Reporting                               | 1<br>838.30      | 838.30              |
| 11/12/2010 - Deposition Expense-Snover Realtime Reporting                    | 1<br>824.90      | 824.90              |
| - Deposition Expense-Snover Realtime Reporting                               | 1<br>568.10      | 568.10              |
| 11/16/2010 - Hearing Transcript - Mark Sanchez                               | 1<br>35.00       | 35.00               |
| 11/18/2010 - Service of Process Fee-Eastern Washington Attorney Services     | 1<br>40.00       | 40.00               |
| 11/19/2010 - Jury Demand Fee - Spokane County Superior Court                 | 1<br>250.00      | 250.00              |
| 12/1/2010 - Westlaw-Legal Research   | 1<br>79.36       | 79.36               |
| 12/6/2010 - Deposition Expense-Snover Realtime Reporting                     | 1<br>700.00      | 700.00              |
| 12/9/2010 - Photocopy Charge(s)  | 1,465<br>0.20    | 293.00              |
| 12/10/2010 - Photocopy Charge(s)   | 24<br>0.20       | 4.80                |
| 12/13/2010 - Postage Charge(s)   | 1<br>2.37        | 2.37                |
| 12/16/2010 - Deposition Expense-Snover Realtime Reporting                    | 1<br>858.45      | 858.45              |
| <b>Total costs</b>   |                  | <u>\$10,888.93</u>  |
| <b>For professional services rendered</b>                                    | <u>598.60</u>    | <u>\$110,238.93</u> |

MEHRING V. CITY OF SPOKANE, et al

2011 Billing Adjustment

Total Segregated 25% / 50% \$19,463.88

| ROBERT A. DURAN (attorney)        |       |          |                    |  |
|-----------------------------------|-------|----------|--------------------|--|
| DATE                              | HOURS | RATE     | AMT BILLED         |  |
| 1/4/2011                          | 0.8   | \$400.00 | \$320.00           |  |
| 1/5/2011                          | 2.6   | \$400.00 | \$1,040.00         |  |
| 1/7/2011                          | 3.8   | \$400.00 | \$1,520.00         |  |
| 1/30/2011                         | 0.4   | \$400.00 | \$160.00           |  |
| 1/31/2011                         | 4.3   | \$400.00 | \$1,720.00         |  |
| 2/1/2011                          | 5.8   | \$400.00 | \$2,320.00         |  |
| 2/2/2011                          | 5.9   | \$400.00 | \$2,360.00         |  |
| 2/3/2011                          | 8     | \$400.00 | \$3,200.00         |  |
| 4/4/2011                          | 0.5   | \$400.00 | \$200.00           |  |
| 4/6/2011                          | 0.8   | \$400.00 | \$320.00           |  |
| 4/25/2011                         | 0.7   | \$400.00 | \$280.00           |  |
| 9/6/2011                          | 2.6   | \$400.00 | \$1,040.00         |  |
| 9/8/2011                          | 2.6   | \$400.00 | \$1,040.00         |  |
| 9/9/2011                          | 4.8   | \$400.00 | \$1,920.00         |  |
| <b>TOTAL</b>                      |       |          | <b>\$18,240.00</b> |  |
| TIME BEFORE 2/4/11                |       |          | \$13,440.00        |  |
| TIME AFTER 2/4/11                 |       |          | \$4,800.00         |  |
| 50% ADJUSTMENT TIME BEFORE 2/4/11 |       |          | \$6,720.00         |  |
| 25% ADJUSTMENT TIME AFTER 2/4/11  |       |          | \$1,200.00         |  |
| <b>TOTAL SEGREGATED AMOUNT</b>    |       |          | <b>\$7,920.00</b>  |  |

| SUSAN C. NELSON (attorney)        |       |          |                    |  |
|-----------------------------------|-------|----------|--------------------|--|
| DATE                              | HOURS | RATE     | AMT BILLED         |  |
| 1/4/2011                          | 0.6   | \$185.00 | \$111.00           |  |
| 1/7/2011                          | 3.4   | \$185.00 | \$629.00           |  |
| 1/25/2011                         | 1.7   | \$185.00 | \$314.50           |  |
| 1/26/2011                         | 3.7   | \$185.00 | \$684.50           |  |
| 1/27/2011                         | 4.5   | \$185.00 | \$832.50           |  |
| 1/28/2011                         | 4.9   | \$185.00 | \$906.50           |  |
| 1/30/2011                         | 3     | \$185.00 | \$555.00           |  |
| 1/31/2011                         | 6     | \$185.00 | \$1,110.00         |  |
| 2/1/2011                          | 4.8   | \$185.00 | \$888.00           |  |
| 2/2/2011                          | 5.3   | \$185.00 | \$980.50           |  |
| 2/3/2011                          | 6.5   | \$185.00 | \$1,202.50         |  |
| 2/8/2011                          | 4.6   | \$185.00 | \$851.00           |  |
| 2/9/2011                          | 1     | \$185.00 | \$185.00           |  |
| 2/14/2011                         | 0.6   | \$185.00 | \$111.00           |  |
| 2/15/2011                         | 3.8   | \$185.00 | \$703.00           |  |
| 3/31/2011                         | 0.6   | \$185.00 | \$111.00           |  |
| 4/4/2011                          | 3.8   | \$185.00 | \$703.00           |  |
| 4/6/2011                          | 5.8   | \$185.00 | \$1,073.00         |  |
| 4/7/2011                          | 4     | \$185.00 | \$740.00           |  |
| 4/8/2011                          | 7     | \$185.00 | \$1295.00          |  |
| 4/11/2011                         | 5.3   | \$185.00 | \$980.50           |  |
| 4/22/2011                         | 5.5   | \$185.00 | \$1,017.50         |  |
| 4/25/2011                         | 5.6   | \$185.00 | \$1,036.00         |  |
| 5/9/2011                          | 9.2   | \$185.00 | \$1,702.00         |  |
| 5/28/2011                         | 4.6   | \$185.00 | \$851.00           |  |
| 5/23/2011                         | 1.6   | \$185.00 | \$296.00           |  |
| 5/30/2011                         | 0.5   | \$185.00 | \$92.50            |  |
| 5/31/2011                         | 1.5   | \$185.00 | \$277.50           |  |
| 6/13/2011                         | 6.2   | \$185.00 | \$1,147.00         |  |
| 7/6/2011                          | 6.1   | \$185.00 | \$1,128.50         |  |
| 8/18/2011                         | 6.2   | \$185.00 | \$1,147.00         |  |
| 8/22/2011                         | 3.2   | \$185.00 | \$592.00           |  |
| 8/23/2011                         | 7.4   | \$185.00 | \$1,369.00         |  |
| 8/24/2011                         | 6.8   | \$185.00 | \$1,258.00         |  |
| 8/25/2011                         | 5.8   | \$185.00 | \$1,073.00         |  |
| 8/30/2011                         | 5.8   | \$185.00 | \$1,073.00         |  |
| 8/31/2011                         | 8.3   | \$185.00 | \$1,525.50         |  |
| 9/3/2011                          | 2.7   | \$185.00 | \$499.50           |  |
| 9/4/2011                          | 6.2   | \$185.00 | \$1,147.00         |  |
| 9/5/2011                          | 8     | \$185.00 | \$1,480.00         |  |
| 9/6/2011                          | 8.6   | \$185.00 | \$1,591.00         |  |
| 9/8/2011                          | 5.9   | \$185.00 | \$1,090.50         |  |
| 9/9/2011                          | 9.7   | \$185.00 | \$1,794.50         |  |
| <b>TOTAL</b>                      |       |          | <b>\$37,148.00</b> |  |
| TIME BEFORE 2/4/11                |       |          | \$8,214.00         |  |
| TIME AFTER 2/4/11                 |       |          | \$28,934.00        |  |
| 50% ADJUSTMENT TIME BEFORE 2/4/11 |       |          | \$4,107.00         |  |
| 25% ADJUSTMENT TIME AFTER 2/4/11  |       |          | \$7,793.50         |  |
| <b>TOTAL SEGREGATED AMOUNT</b>    |       |          | <b>\$11,900.50</b> |  |

| KEVIN W. ROBERTS (attorney) |       |          |                 |  |
|-----------------------------|-------|----------|-----------------|--|
| DATE                        | HOURS | RATE     | AMT BILLED      |  |
| 2/3/2011                    | 1     | \$250.00 | \$250.00        |  |
| <b>TOTAL</b>                |       |          | <b>\$250.00</b> |  |
| 50% ADJUSTMENT              |       |          | \$125.00        |  |

| SHELLIE GARRET (paralegal)        |       |         |                 |  |
|-----------------------------------|-------|---------|-----------------|--|
| DATE                              | HOURS | RATE    | AMT BILLED      |  |
| 2/3/2011                          | 0.2   | \$95.00 | \$19.00         |  |
| 2/9/2011                          | 0.5   | \$95.00 | \$47.50         |  |
| 4/4/2011                          | 0.2   | \$95.00 | \$19.00         |  |
| 4/6/2011                          | 0.4   | \$95.00 | \$38.00         |  |
| 5/23/2011                         | 0.5   | \$95.00 | \$47.50         |  |
| 9/6/2011                          | 0.9   | \$95.00 | \$85.50         |  |
| <b>TOTAL</b>                      |       |         | <b>\$256.50</b> |  |
| TIME BEFORE 2/4/11                |       |         | \$19.00         |  |
| TIME AFTER 2/4/11                 |       |         | \$237.50        |  |
| 50% ADJUSTMENT TIME BEFORE 2/4/11 |       |         | \$9.50          |  |
| 25% ADJUSTMENT TIME AFTER 2/4/11  |       |         | \$59.36         |  |
| <b>TOTAL SEGREGATED AMOUNT</b>    |       |         | <b>\$68.86</b>  |  |

| MAUREEN COX-O'BRIEN (paralegal) |       |         |                |  |
|---------------------------------|-------|---------|----------------|--|
| DATE                            | HOURS | RATE    | AMT BILLED     |  |
| 1/4/2011                        | 0.2   | \$95.00 | \$19.00        |  |
| <b>TOTAL</b>                    |       |         | <b>\$19.00</b> |  |
| 50% ADJUSTMENT                  |       |         | \$9.50         |  |

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 FEDERAL TAX ID 91-1678231

Invoice submitted to:  
 Jay Mehring  
 PO Box 48663  
 Spokane, WA 99228

November 29, 2011

In Reference To: Anne Kirkpatrick and City of Spokane

Professional Services

|           |       | <u>Rate</u>  | <u>Hours</u>     |
|-----------|-------|--|------------------|
| 1/4/2011  | - RAD | Phone call to client; Conference re. hearing issues  | 0.80<br>\$136.00 |
|           | - SCN | Text from client; telephone call with client; Conference with R. Dunn; Email from court                                  | 0.60<br>\$102.00 |
|           | - MCO | Conference with R. Dunn re: Summary Judgment Hearing; Conference with Shellie re: same; Conference with R. Dunn re: same | 0.20<br>\$19.00  |
| 1/5/2011  | - RAD | Hearing preparation  | 2.60<br>\$442.00 |
|           | - SCN | Have Preservation Deposition Notice drafted; Conference with R. Dunn   | 0.40<br>\$68.00  |
|           | - SG  | Draft Notice of Video Deposition   | 0.30<br>\$28.50  |
| 1/7/2011  | - RAD | Meeting with client; Hearing preparation; To Court for Hearing.  | 5.80<br>\$986.00 |
|           | - SCN | Prepare for Hearing; Conference with R. Dunn; Shepardize case law; Conference with client; Hearing                       | 3.40<br>\$578.00 |
| 1/12/2011 | - SCN | Have hearing re-scheduled  | 0.20<br>\$34.00  |



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|                 |  | <u>Rate</u> | <u>Hours</u>     |
|-----------------|--|-------------|------------------|
| 1/18/2011 - SCN | Telephone call with Jay; Conference with R. Dunn   | \$170.00/hr | 0.40<br>\$68.00  |
| 1/21/2011 - RAD | Conference re: FFD Exam; Pleadings re: objection to FFD Exam   | \$170.00/hr | 0.80<br>\$136.00 |
| - SG            | Revise and final motion for Protective Order, Memorandum and Note for Hearing; Prepare for filing  | \$95.00/hr  | 1.00<br>\$95.00  |
| - SCN           | Telephone call from Jay; Conference with R. Dunn; Draft Memorandum for Protective Order; Draft Motion, Draft Note; Draft letter to Cronin; Review procedures re: fitness for duty; Meet with client; Telephone call with Wuthrich; Left voicemail for Vick | \$170.00/hr | 3.90<br>\$663.00 |
| 1/22/2011 - SCN | Emails from/to Defendants; Emails from/to Cronin; Telephone call with R. Dunn  | \$170.00/hr | 0.90<br>\$153.00 |
| 1/24/2011 - SCN | Email from R. Dunn to Cronin; Outline argument; Pull supporting documents; Research case law on fitness for duty exams; Telephone call with Mehring (x2); Conference with R. Dunn; Email to/from Cronin/O'Hara/R. Dunn; Email Jay                          | \$170.00/hr | 3.60<br>\$612.00 |
| - RAD           | Emails to/from client; Emails to/from Tim Cronin; Emails to/from Ellen Oara  | \$170.00/hr | 1.30<br>\$221.00 |
| 1/25/2011 - SCN | Telephone call with Jay; Telephone call with Ernie; Conference with R. Dunn; Forward emails to Jay; Email from Jay; Conference with R. Dunn; Address Judges concerns   | \$170.00/hr | 1.70<br>\$289.00 |
| - RAD           | Emails to/from Tim Cronin; Emails to/from Police Guild   | \$170.00/hr | 1.00<br>\$170.00 |
| 1/26/2011 - SCN | Email Jay (x2); Draft Answers to O'Connor's Summary Judgment Concerns, Draft outline to counter Defendants Introduction; Email from Cronin re: FFDE  | \$170.00/hr | 3.70<br>\$629.00 |
| 1/27/2011 - SCN | Meet with Jay; Research/draft Responses to Judge O'Connor's Questions, Review Tim Cronin's Order   | \$170.00/hr | 4.50<br>\$765.00 |
| - RAD           | Review Order from Tim Cronin   | \$170.00/hr | 0.30<br>\$51.00  |
| 1/28/2011 - SCN | Conference with R. Dunn; Research Judge O'Connor's Issues; Research legislative history of mandatory reporting; Review   | \$170.00/hr | 4.80<br>\$813.00 |

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|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
|                 | development of law enforcement policies re: dv with employees  |             |                    |
| 1/30/2011 - RAD | Review emails from T. Cronin; Hearing preparation  | \$170.00/hr | 0.40<br>\$68.00    |
| - SCN           | Research Judge O'Connor's issues; Review development of law enforcement policies re: dv with employees; Draft hearing outline to address O'Connor's issues   | \$170.00/hr | 3.00<br>\$510.00   |
| 1/31/2011 - RAD | Hearing preparation  | \$170.00/hr | 4.30<br>\$731.00   |
| - SCN           | Conference with R. Dunn; Research Judge O'Connor's issues; Review development of law enforcement policies re: dv with employees; Draft hearing outline to address O'Connor's issues; Review case law re: wrongful withholding; Review Kirkpatrick testimony; File management | \$170.00/hr | 6.00<br>\$1,020.00 |
| 2/1/2011 - RAD  | Hearing preparation  | \$170.00/hr | 5.80<br>\$986.00   |
| - SCN           | Conference with R. Dunn; Outline deposition testimony; Print supplemental cases; Strategize for Hearing  | \$170.00/hr | 4.80<br>\$816.00   |
| 2/2/2011 - RAD  | Hearing preparation; Conference regarding Hearing  | \$170.00/hr | 5.90<br>\$1,003.00 |
| - SCN           | Outline Roberts and Nicks Deposition Testimony; Conference with R. Dunn; Index Exhibits; Outline Terger; Voicemail from Jay; Email from/to Jay; Prepare for Hearing  | \$170.00/hr | 5.30<br>\$901.00   |
| 2/3/2011 - KWR  | Summary Judgment Hearing   | \$250.00/hr | 1.00<br>\$250.00   |
| - RAD           | Hearing preparation; Conference regarding Hearing; Meeting with client; To Court for Hearing   | \$170.00/hr | 8.00<br>\$1,360.00 |
| - SCN           | Prepare for Hearing; Meet with client; Conference with R. Dunn; Hearing  | \$170.00/hr | 6.50<br>\$1,105.00 |
| - SG            | Order Transcript from 2/3 Hearing  | \$95.00/hr  | 0.20<br>\$19.00    |
| 2/4/2011 - SCN  | Strategize re: next step; File management  | \$170.00/hr | 1.00<br>\$170.00   |

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
| 2/8/2011 - SCN  | Draft Proposed Order; Review hearing notes; Conference with R. Dunn; Research damages   | \$170.00/hr | 4.80<br>\$782.00   |
| 2/9/2011 - SCN  | Conference with R. Dunn; Finalize Proposed Order; Email Proposed Order to O'Hara; File management   | \$170.00/hr | 1.00<br>\$170.00   |
| - SG            | Revise and final Order on Motion for Summary Judgment   | \$95.00/hr  | 0.50<br>\$47.50    |
| 2/14/2011 - SCN | Conference with R. Dunn; Telephone call with Jay; Email to/from O'Hara re Proposed Order  | \$170.00/hr | 0.60<br>\$102.00   |
| 2/15/2011 - SCN | Email from/to Ellen; Review Defendants Proposed Order; Conference with R. Dunn; Email re: transcript and scheduling; Telephone call with Jay; Research Discovery Master/FFDE issue; Research criminal testimony issue   | \$170.00/hr | 3.80<br>\$646.00   |
| - SG            | Email to court reporter re: transcript  | \$95.00/hr  | 0.10<br>\$9.50     |
| 2/16/2011 - SCN | Research ER 804(1)(b) re: Lisa Trial Testimony  | \$170.00/hr | 3.50<br>\$595.00   |
| 2/17/2011 - SCN | Email from/to Cronin  | \$170.00/hr | 0.20<br>\$34.00    |
| 2/22/2011 - SCN | Telephone call with client; Review Protective Order; Telephone call with Jeff Holy; Email deposition transcripts  | \$170.00/hr | 0.60<br>\$102.00   |
| 2/24/2011 - RAD | Emails to T. Cronin; Emails from the City Attorney re: IME; Conference re: hearing with Cronin  | \$170.00/hr | 1.00<br>\$170.00   |
| - SCN           | Email from/to Jay re: FDE; Review Temporary Protective Order; Draft/send email to Ellen (x2)  | \$170.00/hr | 1.60<br>\$272.00   |
| 2/25/2011 - SCN | Email from Erin Jacobson; Review notes; Respond to email; Forward to Jay; Note/Schedule Motion with Cronin; Email from Erin; Review Chief's PowerPoint on FFDE; Research psychological tests used in FFDE; Review Dr. Green's findings; Draft/send response email to Erin; Telephone call with Deannette Palmer; Try to locate Dr. Sowers re: FFDE; Telephone call with Jay (x3); Email from Erin/craft | \$170.00/hr | 6.20<br>\$1,054.00 |

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
|                 | response; Telephone call from Jay regarding I/A investigation   |             |                    |
| 2/26/2011 - SCN | Email from/to R. Dunn; Email from Jay   | \$170.00/hr | 1.00<br>\$170.00   |
| 2/27/2011 - SCN | Email from/to R. Dunn; Draft email to Cronin  | \$170.00/hr | 0.70<br>\$119.00   |
| - SCN           | Telephone call with Jay; Conference with R. Dunn; Edit Memorandum for Protective Order; Final Memorandum/Note   | \$170.00/hr | 2.00<br>\$340.00   |
| 2/28/2011 - SG  | Revise and final Amended Memorandum re: Protective Order; Prepare Amended Note for Hearing; Prepare for filing  | \$95.00/hr  | 0.80<br>\$57.00    |
| 3/1/2011 - SCN  | Conference with R. Dunn, Telephone call with Jay; Scan Defendants' pleading; Receive Notice of Appearance for Rocky T. and H. Delaney; Email from court reporter; Prepare for Hearing; Meet with client; Telephonic Hearing on Protective Order; Email Ellen/Rocky; Forward to Jay; Telephone call with Cronin and Ellen O'Hara; Schedule Thursday 10 am Hearing; Telephone call with Ashley re: hearing cancelled; Review Order Text from Jay; Voicemail from Jay; Telephone call with Jay | \$170.00/hr | 4.70<br>\$799.00   |
| - RAD           | Conference re: Hearing issues with T. Cronin; Call to Court; Hearing with T. Cronin   | \$170.00/hr | 2.00<br>\$340.00   |
| 3/2/2011 - SCN  | Conference with R. Dunn; Email from Ashley; Forward emails to client; Email from Ernie; Review documents from Ernie   | \$170.00/hr | 2.50<br>\$425.00   |
| 3/3/2011 - SCN  | Email from client with Formal Notice of IA; Review Notice; Conference with R. Dunn; Review conformed copy of Discovery Master's March 2, 2010 Order   | \$170.00/hr | 0.80<br>\$136.00   |
| 3/4/2011 - SCN  | Email from Court; Schedule Hearing on Protective Order; Conference with R. Dunn; Forward email to client; Telephone call with Hillary McClure Guild Attorney; Email with Hillary McClure  | \$170.00/hr | 1.60<br>\$272.00   |
| 3/7/2011 - SCN  | Email Hillary McClure (x3); Conference with R. Dunn; Research FFDE standards/guidelines; Edit Memorandum for Protective Order; Call Dr. Miller 561-392-8881 re: standards; Telephone call   | \$170.00/hr | 6.70<br>\$1,139.00 |

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|                 |  | <u>Rate</u> | <u>Hours</u>     |
|-----------------|--|-------------|------------------|
|                 | with Dr. Miller; Review Dr. Miller's article and IAPC guidelines   |             |                  |
| 3/8/2011 - SCN  | Telephone call with client (x2); Edit/draft Memorandum for Protective Order; Draft Declaration; Attach Exhibits; Conference with R. Dunn; Case management  | \$170.00/hr | 4.60<br>\$782.00 |
| 3/9/2011 - RAD  | Final Brief; Conference re: hearing issues; Conference re: Guild IA matters  | \$170.00/hr | 2.00<br>\$340.00 |
| - SCN           | Edit R. Dunn Declaration; Edit Memorandum; Review correspondence with Defense re: FFDE; Conference with R. Dunn; Draft Motion to Shorten Time to file pleadings; Telephone call with Jay                                 | \$170.00/hr | 4.00<br>\$680.00 |
| - SG            | Revise and final Memorandum and Declaration of R. Dunn; Prepare for filing   | \$95.00/hr  | 0.80<br>\$76.00  |
| 3/10/2011 - RAD | Conference re: Guild IA issues; Conference re: DME Hearing   | \$170.00/hr | 0.70<br>\$119.00 |
| 3/16/2011 - SG  | Prepare Supplemental Declaration of S. Nelson for filing; Revise and final Declaration of E. Wuthrich  | \$95.00/hr  | 0.40<br>\$38.00  |
| - RAD           | Hearing preparation with Neison  | \$170.00/hr | 1.00<br>\$170.00 |
| - SCN           | Review pleadings filed; Review email communications; Telephone call with Jay (x2); Telephone call with Ernie; Email from Ernie; Draft Supplemental Declaration; Final Declaration; Draft Declaration for Ernie           | \$170.00/hr | 4.80<br>\$816.00 |
| 3/17/2011 - RAD | To Court for Hearing; Meeting with client; Emails re: hearing issues   | \$170.00/hr | 1.70<br>\$289.00 |
| - SCN           | Prepare for Hearing; Conference with R. Dunn; Telephone call with client; Meet with Ernie Wuthrich; Revise Ernie's Declaration; Have Declaration filed; Argue Hearing; Conference with client; Telephone call with Ernie | \$170.00/hr | 4.70<br>\$799.00 |
| 3/21/2011 - SCN | Draft Protective Order; Draft letter to McClure; Email Rocky Protective Order; Conference with R. Dunn   | \$170.00/hr | 2.50<br>\$425.00 |
| - SG            | Edit and final Proposed Order; Edit letter to McClure and Wuthrich   | \$95.00/hr  | 0.40<br>\$38.00  |

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|                 |   | <u>Rate</u> | <u>Hours</u>     |
|-----------------|---|-------------|------------------|
| 3/22/2011 - SCN | Case file management  | \$170.00/hr | 0.30<br>\$51.00  |
| 3/23/2011 - SCN | Strategize; Email Rocky/Ellen; Have Hearing Noted   | \$170.00/hr | 0.80<br>\$136.00 |
| 3/24/2011 - SG  | Telephone call with Court; Prepare Notice of Presentment; Prepare for filing  | \$95.00/hr  | 0.40<br>\$38.00  |
| - RAD           | Emails re: IA investigation   | \$170.00/hr | 0.50<br>\$85.00  |
| - SCN           | Have Hearing Note sent; Conference with R. Dunn; Email from/to McClure (x2); Strategize; Review IA packet; Email from/to Jay  | \$170.00/hr | 1.80<br>\$306.00 |
| 3/25/2011 - SCN | Email from/to Hillary; Conference with R. Dunn; Email from/to Rocky; Telephone call with Jay; Follow up on Summary Judgment Hearing Transcript; Email Jay; Review Discovery Requests for those needing supplement; Draft letter to opposing | \$170.00/hr | 4.00<br>\$680.00 |
| 3/28/2011 - SCN | Final and have discovery letter sent  | \$170.00/hr | 0.30<br>\$51.00  |
| - SG            | Revise and final letter to E. O'Hara  | \$95.00/hr  | 0.20<br>\$19.00  |
| 3/29/2011 - RAD | Conference re: Guld IA matters; Meeting with client   | \$170.00/hr | 1.00<br>\$170.00 |
| - SCN           | Telephone call with client; Meet with client; Conference with R. Dunn; Revise McClure/Wuthrich letter and send to opposing  | \$170.00/hr | 2.00<br>\$340.00 |
| 3/30/2011 - SCN | Telephone call with client; Research recent decisions on procedural due process violations; Draft letter to McClure/Wuthrich re: IA; Conference with R. Dunn  | \$170.00/hr | 2.00<br>\$340.00 |
| 3/31/2011 - SCN | Review Defendant's Notice of Presentment re: Summary Judgment   | \$170.00/hr | 0.60<br>\$102.00 |
| 4/4/2011 - RAD  | Conference re: Summary Judgment Order; Conference re: Guld proceeding   | \$170.00/hr | 0.50<br>\$85.00  |
| - SCN           | Draft letter to McClure/Wuthrich re: IA; Compare Proposed Orders on Summary Judgment; Review notes from Summary   | \$170.00/hr | 3.80<br>\$646.00 |

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|                |  | Rate        | Hours            |
|----------------|--|-------------|------------------|
|                | Judgment Holding; Conference with R. Dunn; Email Ellen   |             |                  |
| 4/4/2011 - SG  | Revise and fina. Order on Summary Judgment; Prepare for filing   | \$95.00/hr  | 0.20<br>\$19.00  |
| 4/5/2011 - SCN | Final letter; Email client; Email from Ashley  | \$170.00/hr | 1.00<br>\$170.00 |
| - SG           | Revise and final letter to H. McClure/E. Wuthrich  | \$95.00/hr  | 0.30<br>\$28.50  |
| 4/6/2011 - RAD | Emails from client; Final Memorandum re: Court Order; Conference re: Hearing Issues  | \$170.00/hr | 0.80<br>\$136.00 |
| - SCN          | Conference with R. Dunn; Draft Objection to Proposed Order re: Summary Judgment; Edit Proposed Order; Final Order; Review Arleth Affidavit; Email Hillary re: phone call; Telephone call with Hillary; Email letter and Summary Judgment pleading/Affidavits/Declarations to Hillary; Email from Jay; Telephone call with Jay; Email from City Attorney; Review Objection to Protective Order; Telephone call with Ellen and Rocky; Review hand written notes from hearings; Have Orders prepared for signature; Prepare for Hearing; Email city attorneys | \$170.00/hr | 5.80<br>\$986.00 |
| - SG           | Revise and final Objection to City's Proposed Order; Prepare for filing  | \$95.00/hr  | 0.40<br>\$38.00  |
| 4/7/2011 - SCN | Prepare for Hearing; To/from Court; Hearing; Conference with Ellen; Conference with R. Dunn; Voicemail from client; Voicemail for client; Telephone call with client; Strategize with R. Dunn; Review Proposed Order from Ellen  | \$170.00/hr | 4.00<br>\$680.00 |
| - RAD          | Conference re: Hearing   | \$170.00/hr | 0.70<br>\$119.00 |
| 4/8/2011 - SCN | Email City Attorney re: Proposed Order (x2); Email from City Attorney (x2); Draft/research Summary Judgment on due process; Voicemail from Jay re: public records request  | \$170.00/hr | 2.00<br>\$340.00 |

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
| 4/11/2011 - SCN | Conference with R. Dunn; Email from City Attorney. Review Proposed Order; Research 14th amendment claims/precedence   | \$170.00/hr | 5.30<br>\$901.00   |
| 4/12/2011 - SCN | Conference with R. Dunn re: Defendants' Proposed Order; Review Proposed Order - have finalized for signature; Research 14th Amendment case law; Telephone call with Jay | \$170.00/hr | 5.50<br>\$935.00   |
| 4/13/2011 - SCN | Conference with R. Dunn; Review due process case law  | \$170.00/hr | 2.60<br>\$442.00   |
| 4/14/2011 - SCN | File management   | \$170.00/hr | 0.30<br>\$51.00    |
| 4/15/2011 - SG  | Draft and final letter to client  | \$95.00/hr  | 0.20<br>\$19.00    |
| - SCN           | Execute letter to Mehring   | \$170.00/hr | 0.20<br>\$34.00    |
| 4/19/2011 - SCN | Research/draft Summary Judgment   | \$170.00/hr | 1.40<br>\$238.00   |
| 4/20/2011 - SCN | Research/draft Summary Judgment; SR article on Kirkpatrick  | \$170.00/hr | 6.40<br>\$1,088.00 |
| 4/21/2011 - SCN | Draft Summary Judgment; Review articles on Kirkpatrick  | \$170.00/hr | 1.50<br>\$255.00   |
| 4/22/2011 - SCN | Draft Summary Judgment; Research  | \$170.00/hr | 4.90<br>\$833.00   |
| 4/25/2011 - SCN | Draft Summary Judgment; Research; Review client email; Email client; Conference with R. Dunn  | \$170.00/hr | 5.60<br>\$952.00   |
| - RAD           | Review IA Investigation Report; Conference re: Amended Complaint issues   | \$170.00/hr | 0.70<br>\$119.00   |
| 4/27/2011 - SCN | Research; Draft Memorandum Summary Judgment   | \$170.00/hr | 3.80<br>\$646.00   |
| - RAD           | Conference re: case status issues   | \$170.00/hr | 0.50<br>\$85.00    |
| 4/28/2011 - SCN | Draft Summary Judgment Memorandum; Review police policy manual; Conference with R. Dunn re: wrongful withholding wages/due process claims                               | \$170.00/hr | 4.70<br>\$799.00   |

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 FEDERAL TAX ID # 91-1578237

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|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
| 4/29/2011 - SCN | Review civil service rules; Review CBA;<br>Draft Summary Judgment  | \$170.00/hr | 4.40<br>\$748.00   |
| 5/3/2011 - SCN  | Draft Summary Judgment; research; Email<br>from Hillary McClure  | \$170.00/hr | 3.00<br>\$510.00   |
| 5/4/2011 - SCN  | Review ARP final finding re: Mehring<br>insubordination provided by McClure;<br>Research   | \$170.00/hr | 1.40<br>\$238.00   |
| 5/5/2011 - SCN  | Draft Summary Judgment Memorandum  | \$170.00/hr | 4.50<br>\$765.00   |
| 5/6/2011 - SCN  | Draft Summary Judgment Memorandum;<br>Communications with Wuthrich;<br>Communications with Mehring   | \$170.00/hr | 4.20<br>\$714.00   |
| 5/9/2011 - SCN  | Draft Summary Judgment Memorandum;<br>Communications with Wuthrich;<br>Communications with Mehring; Conference<br>re: status of Defendants Summary<br>Judgment Order; Review City charter/civil<br>service rules; RCWs; guild contract                         | \$170.00/hr | 9.20<br>\$1,564.00 |
| - SG            | Email to City Attorney's office re: Order  | \$95.00/hr  | 0.20<br>\$19.00    |
| 5/10/2011 - SCN | Edit Summary Judgment Memorandum;<br>Conference with R. Dunn; Verify case cites  | \$170.00/hr | 3.50<br>\$595.00   |
| - RAD           | Work on Summary Judgment Brief   | \$170.00/hr | 2.50<br>\$425.00   |
| 5/11/2011 - SCN | Voicemail from client  | \$170.00/hr | 0.20<br>\$34.00    |
| 5/12/2011 - SCN | Edit Summary Judgment; Conference with<br>R. Dunn re: Ernie deposition;<br>Communications with Wuthrich;<br>Communications from the City; Meet with<br>client; Review ARP finding; Review<br>Command Staff finding; Cite to criminal<br>holding by Judge Price | \$170.00/hr | 5.60<br>\$952.00   |
| 5/16/2011 - RAD | Conference re: Summary Judgment Brief<br>issues  | \$170.00/hr | 1.00<br>\$170.00   |
| - SCN           | Communications from City Attorney Office   | \$170.00/hr | 0.20<br>\$34.00    |
| 5/17/2011 - RAD | Redraft Summary Judgment Brief;<br>Conference re: Summary Judgment Motion  | \$170.00/hr | 2.60<br>\$442.00   |

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 FEDERAL TAX ID #1-1578231

|             |  | <u>Rate</u> | <u>Hours</u>     |
|-------------|--|-------------|------------------|
| 5/17/2011 - | SCN Conference with R. Dunn  | \$170.00/hr | 0.40<br>\$68.00  |
| 5/18/2011 - | SCN Edit Memorandum for Summary Judgment;<br>Amend Complaint; Research<br>retaliation/hostile work environment claims                                    | \$170.00/hr | 4.60<br>\$782.00 |
| -           | SG Revise/edit Memorandum for Summary<br>Judgment  | \$95.00/hr  | 1.70<br>\$161.50 |
| 5/19/2011 - | SCN Voicemail from McClure; Correspondence<br>with McClure; Correspondence with City<br>attorney; Conference with R. Dunn;<br>Correspondence with client | \$170.00/hr | 1.80<br>\$306.00 |
| -           | RAD Emails to/from City re: discovery;<br>Conference re: discovery issues  | \$170.00/hr | 0.60<br>\$102.00 |
| 5/20/2011 - | SCN Send Deposition Notice to City;<br>Correspondence with client;<br>Correspondence from City   | \$170.00/hr | 0.90<br>\$153.00 |
| -           | SG Prepare Notice of Deposition of Erin<br>Jacobson  | \$95.00/hr  | 0.40<br>\$38.00  |
| 5/22/2011 - | SCN City Notice of Deposition; Conference with<br>R. Dunn; Correspondence with client;<br>Correspondence with City                                       | \$170.00/hr | 0.40<br>\$68.00  |
| -           | RAD Conference re: discovery issues  | \$170.00/hr | 0.50<br>\$85.00  |
| 5/23/2011 - | SCN Correspondence with client;<br>Correspondence with City; Conference with<br>R. Dunn; Edit Amended Complaint  | \$170.00/hr | 1.80<br>\$272.00 |
| -           | SG Revisions to Amended Complaint  | \$95.00/hr  | 0.50<br>\$47.50  |
| 5/24/2011 - | SG Arrange court reporter for deposition;<br>Review emails re: E. Wuthrich Deposition<br>Notice  | \$95.00/hr  | 0.50<br>\$47.50  |
| -           | SCN Scheduling depositions; Correspondence<br>with McClure; Correspondence with client;<br>Conference with R. Dunn                                       | \$170.00/hr | 0.90<br>\$153.00 |
| 5/25/2011 - | SCN Correspondence with client; Voicemail from<br>client; Voicemail from City Attorney   | \$170.00/hr | 0.90<br>\$153.00 |
| 5/26/2011 - | SCN Correspondence with client   | \$170.00/hr | 0.50<br>\$85.00  |

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|                 |   | <u>Rate</u> | <u>Hours</u>     |
|-----------------|---|-------------|------------------|
| 5/27/2011 - SCN | Correspondence from City  | \$170.00/hr | 0.40<br>\$68.00  |
| 5/30/2011 - SCN | Review client edits to Amended Complaint  | \$170.00/hr | 0.50<br>\$85.00  |
| 5/31/2011 - SCN | Edit Amended Complaint; File management   | \$170.00/hr | 1.50<br>\$255.00 |
| 6/1/2011 - SCN  | Draft Declaration of S. Nelson; Draft Declaration J. Mehring; Client correspondence   | \$170.00/hr | 1.70<br>\$289.00 |
| 6/2/2011 - SG   | Telephone call with City Attorney's office re: Deposition of client (x2)  | \$95.00/hr  | 0.20<br>\$19.00  |
| - SCN           | Correspondence from City Attorney; Correspondence from Sondemann documents; Draft S. Nelson Declaration; Correspondence with client   | \$170.00/hr | 2.10<br>\$357.00 |
| 6/3/2011 - SCN  | Correspondence from City; Edit Memorandum for Summary Judgment; Edit Declaration; Draft Motion for Summary Judgment; Draft Motion to Amend Complaint; Review Civil Rules; Have Judge O'Connor administrator contacted re: hearing dates   | \$170.00/hr | 2.80<br>\$442.00 |
| 6/6/2011 - SCN  | Edit Summary Judgment Memorandum; Voicemail from client; Correspondence from Defendants   | \$170.00/hr | 2.40<br>\$408.00 |
| 6/7/2011 - SCN  | Conference with R. Dunn; Draft letter to Defendants; Correspondence with client; Review correspondence with Dr. Palmer; Review Sodemann file re: Dr. Palmer; Review medical authorizations provided to Defendants; Create timeline of events; Final letter; Correspondence with Palmer; Research per se violations; Correspondence/Notice of Appearance from Beth Kenner; Research opposing counsel; Edit Summary Judgment Memorandum | \$170.00/hr | 5.50<br>\$935.00 |
| - RAD           | Letter from City; Emails to/from City; Conference re: discovery issues  | \$170.00/hr | 0.60<br>\$102.00 |
| - SG            | Edit, revise and final letter to E. O'Hara  | \$95.00/hr  | 0.30<br>\$28.50  |

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 FEDERAL TAX ID # 91-673231

|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
| 6/8/2011 - KWR  | Revise email; Conference with S. Nelson re: trial strategy/discovery issues  | \$250.00/hr | 1.00<br>\$250.00   |
| - RAD           | Conference re: discovery issues  | \$170.00/hr | 0.80<br>\$136.00   |
| - SCN           | Research per se due process violations; Correspondence with O'Hara; Correspondence with Beth Kennar - Summit Law Group; Conference with R. Dunn; Conference with K. Roberts; Draft Motion/Memorandum to Compel   | \$170.00/hr | 5.10<br>\$867.00   |
| 6/9/2011 - RAD  | Conference re: discovery issues  | \$170.00/hr | 0.90<br>\$153.00   |
| - SCN           | Correspondence with City Attorney; Conference with R. Dunn; Draft letter to Palmer; Research cause of action for witness tampering   | \$170.00/hr | 2.60<br>\$442.00   |
| - SG            | Edit, revise and final letter to E. O'Hara   | \$95.00/hr  | 0.20<br>\$19.00    |
| 6/10/2011 - RAD | Emails to/from City Attorney   | \$170.00/hr | 0.60<br>\$102.00   |
| - SCN           | Correspondence with City Attorney; Correspondence from Dr. Palmer; Conference with Beth Kennar; Correspondence with client; Draft Supplemental Discovery Responses; Meet with client; Review Notice of Unavailability of Defense Counsel; Finalize Supplemental Discovery; Review recent 9th Circuit Holding on 1993 actions | \$170.00/hr | 4.90<br>\$833.00   |
| - SG            | Revisions to Supplemental Discovery Responses; Meet with client; Notarize Discovery Responses  | \$95.00/hr  | 0.30<br>\$28.50    |
| 6/13/2011 - SCN | Conference with R. Dunn; Correspondence with O'Hara; Finalize Summary Judgment Memorandum/Motion/Declaration; Finalize Amended Complaint/Memorandum/Motion/Declaration; Exhibits; Correspondence with Dr. Palmer   | \$170.00/hr | 6.20<br>\$1,054.00 |
| - SG            | Edit, revise and final Motion for Summary Judgment, Motion to Amend Complaint, Declarations of S. Nelson, Memorandums; Prepare Note for Hearing; Prepare for filing  | \$95.00/hr  | 2.40<br>\$228.00   |

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
| 6/14/2011 - RAD | Meeting with client; Conference re: discovery and Summary Judgment issues   | \$170.00/hr | 1.10<br>\$187.00   |
| - SCN           | Conference with R. Dunn; Correspondence with O'Hara; Correspondence with Dr. Palmer's attorney; Correspondence with client; Review newly produced discovery; Correspondence with McClure (x2); Meet with client; Revise Authorization for Release to Dr. Palmer; Draft letter to O'Hara; Have release hand delivered; Correspondence with Kennar; Calendaring; Correspondence with Dr. Palmer; Re-note Erin Jacobson Deposition; Review notes | \$170.00/hr | 6.40<br>\$1,088.00 |
| - SG            | Edit, revise and final letter to E. O'Hara  | \$95.00/hr  | 0.20<br>\$19.00    |
| 6/15/2011 - SCN | Correspondence from City; Review discovery  | \$170.00/hr | 1.20<br>\$204.00   |
| - RAD           | Conference re: Discovery issues   | \$170.00/hr | 0.80<br>\$136.00   |
| 6/16/2011 - SCN | Correspondence with Kennar; Review pleadings; Correspondence with client; Conference with R. Dunn   | \$170.00/hr | 4.20<br>\$714.00   |
| 6/17/2011 - SCN | Correspondence with Dr. Palmer; Calendaring of hearings/pleadings; Discovery  | \$170.00/hr | 4.80<br>\$816.00   |
| 6/20/2011 - SCN | Correspondence with client; Correspondence with Dr. Palmer; Review Defendants pleadings; Draft Objection to Motion for FFDE; Confer with R. Dunn  | \$170.00/hr | 6.80<br>\$1,156.00 |
| 6/21/2011 - SG  | Revise and final Response to Motion for FFDE; Draft Amended Rebuttal Witness Disclosure   | \$95.00/hr  | 1.20<br>\$114.00   |
| - RAD           | Redraft Response Brief; Conference re: Brief issues   | \$170.00/hr | 2.00<br>\$340.00   |
| - SCN           | Draft/edit Objection to FFDE; Draft/edit S. Nelson Declaration; Draft/edit J. Mehring Declaration; Document review - Discovery; Correspondence with Court; Correspondence with O'Hara; Correspondence with client; Correspondence with Jennifer Underwood - Dr. Palmer's attorney   | \$170.00/hr | 7.40<br>\$1,258.00 |

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 FEDERAL TAX ID #1-1578231

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|           |       | <u>Rate</u>  | <u>Hours</u>                      |
|-----------|-------|--|-----------------------------------|
| 6/22/2011 | WDM   | Conference with S. Nelson re: Motion for Leave to Amend issues   | \$200.00/hr<br>0.30<br>\$60.00    |
|           | - RAD | Redraft Response Brief; Conference re: pleading issues; Email's to/from City Attorney  | \$170.00/hr<br>2.00<br>\$340.00   |
|           | - SCN | Edit Memorandum Summary Judgment/Errata; Have courtesy copies pulled for Judge O'Connor; Edit letter to Court; Review Discovery; Correspondence with O'Hara; Meet with client; Finalize Objection/Declarations in Support Of   | \$170.00/hr<br>4.20<br>\$714.00   |
|           | - LR  | Conference with S. Nelson; Revise/final Errata of Memorandum in Support of Motion for Summary Judgment; File/serve same; Draft letter to Judge O'Connor regarding changes and judicial copies  | \$95.00/hr<br>0.50<br>\$47.50     |
| 6/23/2011 | SCN   | Correspondence with City Attorney; Correspondence with Court; Correspondence with client; Voicemail from client; Correspondence with Dr. Palmer's attorney; Conference with R. Dunn  | \$170.00/hr<br>2.30<br>\$391.00   |
|           | - RAD | Emails from/to E. OHara re: discovery; Conference re: discovery issues   | \$170.00/hr<br>1.00<br>\$170.00   |
| 6/24/2011 | SP    | E-mail to B. Kennar, E-mail to client  | \$95.00/hr<br>0.10<br>\$9.50      |
| 6/26/2011 | SCN   | Correspondence with City Attorney; Correspondence with Court   | \$170.00/hr<br>0.30<br>\$51.00    |
| 6/27/2011 | WDM   | Conference with S. Nelson re: Motion to Amend/Summary Judgment issues  | \$200.00/hr<br>0.40<br>\$80.00    |
|           | - SCN | Correspondence with City Attorney; Correspondence with Court; Correspondence with client; Review client PAR; Strategize; Review City's pleadings; Review pleadings filed on Friday; Draft Discovery; Email to City Attorney  | \$170.00/hr<br>5.00<br>\$850.00   |
| 6/28/2011 | SCN   | Correspondence with City Attorney; Conference with R. Dunn; Correspondence with Cronin's office; Correspondence with Court; Draft Supplemental Notes re: Motion for Summary Judgment and Motion to Amend; Correspondence with Dr. Palmer's attorney; Deposition preparation with client; | \$170.00/hr<br>7.50<br>\$1,275.00 |

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|                 |   | <u>Rate</u> | <u>Hours</u>       |
|-----------------|---|-------------|--------------------|
|                 | Review Dr. Palmer's notes; Draft Motion to Compel   |             |                    |
| 6/28/2011 - RAD | Deposition preparation with client; Conference re: discovery issues; Emails to/from E. Ora  | \$170.00/hr | 2.30<br>\$391.00   |
| - LR            | Conference with S. Nelson Revise/final Amended Notice of Hearing on Motion for Summary Judgment and Motion to Amend Complaint; Assemble for filing and service  | \$95.00/hr  | 0.50<br>\$47.50    |
| 6/29/2011 - SCN | Correspondence with City Attorney; Conference with R. Dunn; Deposition preparation; Deposition; Correspondence with Cronin; Conference call with Cronin; Correspondence with client; Correspondence with Dr. Palmer's attorney; Correspondence with Hillary McClure; review Subpoena Duces Tecum to Dr. Palmer                        | \$170.00/hr | 7.80<br>\$1,292.00 |
| - RAD           | Deposition of J. Mehring; Phone calls to T. Cronin; Emails to T. Cronin   | \$170.00/hr | 5.00<br>\$850.00   |
| 6/30/2011 - SCN | Correspondence with City Attorney; Correspondence with client; Conference with R. Dunn; Review Discovery Requests; Research paid leave; Correspondence with Judge; Hearing preparation; Draft hearing outline; Review Defendants Reply Brief; Correspondence with Snover Reporting; Review transcript re: alleged vio of leave letter | \$170.00/hr | 7.10<br>\$1,207.00 |
| - SG            | Draft Subpoena to Spokane County Prosecutor   | \$95.00/hr  | 0.50<br>\$47.50    |
| 7/1/2011 - KP   | Legal Research re: what the implications are for an attorney who engages in witness tampering   | \$110.00/hr | 0.80<br>\$88.00    |
| - RAD           | Emails re: Discovery; Conference re: hearing issues and ruling  | \$170.00/hr | 1.00<br>\$170.00   |
| - SCN           | Conference with R. Dunn; Conference with client; Prepare for Hearing; Hearing; Conference/scheduling with client; Correspondence with Dr palmer's attorney; Correspondence with City; Review CR 26; Conference with K. Roberts; Correspondence with client  | \$170.00/hr | 4.80<br>\$816.00   |

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 FEDERAL TAX ID 91-1578231

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|                |  | <u>Rate</u> | <u>Hours</u>       |
|----------------|--|-------------|--------------------|
| 7/5/2011 - KP  | Legal Research re: what the implications are when an attorney intimidates a witness  | \$110.00/hr | 3.00<br>\$330.00   |
| - KWR          | Strategy conference with S. Nelson re: Deposition  | \$250.00/hr | 0.50<br>\$125.00   |
| - SCN          | Draft Response and Declaration to Motion for Continuance; Correspondence with City Attorney; Correspondence with Dr. Palmer's attorney; Draft Memorandum/Declaration to Compel; Correspondence with Beth Kennar; Correspondence with client; CR 26 Conference with City Attorney; Final Response pleadings                   | \$170.00/hr | 7.80<br>\$1,326.00 |
| - SG           | Revise and edit Memorandum re: Motion to Compel and Declaration of S. Nelson; Revise, edit and final Response to Motion to Continue, Declaration of S. Nelson; Prepare for filing  | \$95.00/hr  | 1.20<br>\$114.00   |
| - LR           | Emails to/from R. Dunn and S. Nelson regarding drafts of deposition transcripts received, noted to file  | \$95.00/hr  | 0.20<br>\$19.00    |
| - RAD          | Emails from E. Ohara; Conference re: discovery issues  | \$170.00/hr | 1.10<br>\$187.00   |
| 7/6/2011 - SCN | Pull documents for Jacobson Declaration; Conference with client; Correspondence with Dr. Palmer attorney; Research attorney privilege when attorney wears two hats; Draft timeline re: Jacobson; Review meeting notes; Research hostile work environment; Correspondence with City Attorney; Correspondence with Beth Kennar | \$170.00/hr | 6.10<br>\$1,037.00 |
| - SG           | Cancel court reporter  | \$95.00/hr  | 0.10<br>\$9.50     |
| - RAD          | Emails from/to E. Wuthrich; Conference re: discovery issues; Final pleadings and letter to City  | \$170.00/hr | 1.80<br>\$306.00   |
| 7/7/2011 - SG  | Revise, edit and final Subpoena Duces Tecum to Dr. Palmer; Telephone call with City Attorney's office re: Palmer Deposition  | \$95.00/hr  | 0.40<br>\$38.00    |
| - SCN          | Correspondence with Dr. Palmer's attorney; Draft Subpoena Duces Tecum; Dr. Palmer; Research; Correspondence with City Attorney; Conference with R. Dunn; Correspondence with client; Research  | \$170.00/hr | 5.30<br>\$901.00   |

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|                 |  | Rate        | Hours            |
|-----------------|--|-------------|------------------|
|                 | Reply to Amend Complaint; Draft Reply;<br>Correspondence from DeMello  |             |                  |
| 7/8/2011 - RAD  | Conference re: discovery issues  | \$170.00/hr | 0.50<br>\$85.00  |
| - SCN           | Draft Reply to Amended Complaint;<br>Conference with R. Dunn; Draft Motion to<br>Compel; Edit Memorandum/Declaration for<br>Motion to Compel; Have pleadings finalized<br>for filing   | \$170.00/hr | 2.20<br>\$374.00 |
| - SG            | Telephone call and email to Court; Edit,<br>revise and final Reply to Motion to Amend  | \$95.00/hr  | 0.70<br>\$66.50  |
| 7/10/2011 - RAD | Review email to E. OHara re: ex parte<br>communications with client's health care<br>providers   | \$170.00/hr | 0.30<br>\$51.00  |
| - SCN           | Strategize   | \$170.00/hr | 0.20<br>\$34.00  |
| 7/11/2011 - RAD | Conference re: pleading issues; Conference<br>re: discovery matters; Emails re: Deposition<br>Transcript   | \$170.00/hr | 0.80<br>\$153.00 |
| - SCN           | Strategize; Correspondence with client;<br>Correspondence with Wuthrich; Conference<br>with R. Dunn; Review deposition transcript;<br>Finalize pleadings - Motion to Compel;<br>Finalize Subpoena Duces Tecum to Dr.<br>Palmer   | \$170.00/hr | 3.20<br>\$544.00 |
| - SG            | Email to T. Cronin's office; Set Hearing;<br>Edit, revise and final Motion to Compel and<br>Declaration of S. Nelson; Draft and final<br>Motion to Shorten Time, Declaration of S.<br>Nelson, Order Compelling Discovery, Order<br>Shortening Time and Note for Hearing;<br>Prepare for filing; Revise and final<br>Subpoena Duces Tecum to Dr. Palmer | \$95.00/hr  | 2.40<br>\$228.00 |
| 7/12/2011 - SN  | Legal research re: effect of using<br>documents in support of motion that were<br>not disclosed in discovery   | \$110.00/hr | 1.00<br>\$110.00 |
| - RAD           | Conference re: Hearing issues; Conference<br>re: discovery issues  | \$170.00/hr | 0.60<br>\$102.00 |
| - SCN           | Correspondence with Ashley;<br>Correspondence with City Attorney;<br>Conference with R. Dunn; Draft Hearing<br>Outline - Motion to Amend; Draft  | \$170.00/hr | 5.60<br>\$952.00 |

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
|                 | Supplemental Declaration; Client correspondence; Draft hearing outline - Motion for Continuance; Prepare for Hearing; Attend Hearing  |             |                    |
| 7/12/2011 - SG  | Draft, revise and final Supplemental Declaration of S. Nelson; Prepare for filing   | \$95.00/hr  | 0.40<br>\$38.00    |
| 7/13/2011 - RAD | Meeting with client; Deposition of client; Conference re: discovery issues  | \$170.00/hr | 6.60<br>\$1,122.00 |
| - SCN           | Correspondence with client; Deposition preparation; Deposition of J. Mehring; Draft Reply to Motion to Amend; Conference with R. Dunn   | \$170.00/hr | 8.60<br>\$1,462.00 |
| - SG            | Prepare Acceptance of Service of Subpoena Duces Tecum to Palmer   | \$95.00/hr  | 0.20<br>\$19.00    |
| 7/14/2011 - SG  | Edit, revise and final Amended Reply and Amended Supplemental Declaration of S. Nelson  | \$95.00/hr  | 0.80<br>\$76.00    |
| - SCN           | Draft Reply Brief; Draft Supplemental Declaration; Conference with R. Dunn; Conference with McClure; Correspondence with client; Review un-redacted Palmer Notes for Objection; Correspondence with Underwood | \$170.00/hr | 4.30<br>\$731.00   |
| 7/15/2011 - SG  | Prepare Amended Reply and Declaration of S. Nelson for filing; Review Declaration of S. Oropeza and compare with documents previously attached to Supplemental Statement of Material Facts                    | \$95.00/hr  | 0.80<br>\$76.00    |
| - SCN           | finalize pleadings; Review City's Errata  | \$170.00/hr | 0.70<br>\$119.00   |
| 7/18/2011 - SCN | Correspondence with City; Correspondence with Court; City's pleadings   | \$170.00/hr | 1.50<br>\$255.00   |
| - SG            | Revise and final Acceptance of Service; Draft and final letter to J. Underwood  | \$95.00/hr  | 0.40<br>\$38.00    |
| 7/19/2011 - RAD | E-mails re: Discovery issues; E-mails from E. Wuthrich; E-mails from City   | \$170.00/hr | 1.00<br>\$170.00   |
| - WDM           | Strategy conference re: hearing   | \$200.00/hr | 0.30<br>\$60.00    |

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|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
| 7/19/2011 - SCN | Prepare for Hearing; Hearing; Conference with client; Correspondence with Wuthrich; Conference with R. Dunn; Review Supplemental Discovery; Conference with J. Underwood; Correspondence with J. Underwood; Correspondence with City; Review City pleadings for Protective Order | \$170.00/hr | 5.20<br>\$884.00   |
| 7/20/2011 - SG  | Draft Order Granting Motion to Amend Complaint; Draft letter to E. O'Hara  | \$95.00/hr  | 0.70<br>\$66.50    |
| - RAD           | E-mails re: Discovery and Trial issues; Conference re: Hearing Issues; Telephone call from E. Wuthrich; E-mail from E. Wuthrich  | \$170.00/hr | 2.40<br>\$408.00   |
| - SCN           | Correspondence with R. Dunn; Correspondence with court; Correspondence with Underwood; Correspondence with City; Prepare for hearing on Motion to Compel; Hearing on Motion to Compel; Final Order Motion to Amend   | \$170.00/hr | 6.30<br>\$1,071.00 |
| 7/21/2011 - SG  | Re-draft and final Order to Amend; Prepare Notice of Presentment; Prepare for filing   | \$95.00/hr  | 0.50<br>\$47.50    |
| - RAD           | E-mails re: Summary Judgment/Trial Issues  | \$170.00/hr | 0.70<br>\$119.00   |
| - SCN           | Correspondence with Court; Correspondence from Underwood; Correspondence with City; Edit Proposed Order; Review Discovery Master Order; Conference with R. Dunn; Schedule Wuthrich Deposition; Review City's Proposed Order  | \$170.00/hr | 3.50<br>\$595.00   |
| 7/22/2011 - RAD | E-mail re: opening statement issues; Letter from City  | \$170.00/hr | 0.80<br>\$136.00   |
| - SCN           | Correspondence from City; Correspondence from Cronin; Conference with client; Strategize for Trial; Review discovery list  | \$170.00/hr | 3.80<br>\$646.00   |
| 7/25/2011 - RAD | E-mails re: Discovery issues   | \$170.00/hr | 0.60<br>\$102.00   |
| - SCN           | Conference with R. Dunn; Draft Discovery re: retaliation/HWE. Review SNR staff meeting minutes   | \$170.00/hr | 2.50<br>\$425.00   |

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|                 |  | Rate        | Hours             |
|-----------------|--|-------------|-------------------|
| 7/26/2011 - SCN | Review City pleadings; Review documents; Strategize; Correspondence with Wuthrich; File management   | \$170.00/hr | 2.20<br>\$374.00  |
| - RAD           | Work on Appellate Brief, Conference re. Brief issues   | \$170.00/hr | 6.40<br>NO CHARGE |
| 7/27/2011 - RAD | Work on Appellate Brief; Conference re: Brief issues; E-mails re: Brief issues   | \$170.00/hr | 7.00<br>NO CHARGE |
| - SCN           | Correspondence with J. Julius - Guild Attorney   | \$170.00/hr | 1.40<br>\$238.00  |
| 7/28/2011 - SCN | Meet with client; Review Witness List  | \$170.00/hr | 1.80<br>\$306.00  |
| 7/29/2011 - SN  | Legal research re: seeking discovery from all members of a corporation/ the City; Draft legal documents re: Interrogatories and Requests for Production  | \$110.00/hr | 3.30<br>\$363.00  |
| - SCN           | Review Discovery; Strategize; Conference with law clerk re: discovery requests/new claims; Correspondence with DeMello; Correspondence with J. Holy  | \$170.00/hr | 1.50<br>\$255.00  |
| 7/31/2011 - SCN | Conference with R. Dunn  | \$170.00/hr | 0.20<br>\$34.00   |
| 8/1/2011 - SN   | Legal research re: compelling discovery from all employees of the city; Email Discovery  | \$110.00/hr | 4.60<br>\$506.00  |
| - RAD           | Emails re: discovery disputes  | \$170.00/hr | 0.40<br>\$68.00   |
| - SCN           | Conference with R. Dunn; File management; Strategize; Correspondence with DeMello  | \$170.00/hr | 1.70<br>\$289.00  |
| 8/2/2011 - SN   | Draft legal documents re: second set of Interrogatories and Requests for Production of Documents   | \$110.00/hr | 2.10<br>\$231.00  |
| - RAD           | Meeting with E. Wuthridge and counsel and client; Conference re: discovery issues  | \$170.00/hr | 1.00<br>\$170.00  |
| - SCN           | Prepare for meeting; Conference with J. Julius; Conference with client; Execute Proposed Order Amend Complaint; Conference with R. Dunn; Correspondence from Julius; Correspondence with Cronin; Review Mehring deposition/Kirkpatrick | \$170.00/hr | 6.10<br>\$867.00  |

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|                |   | <u>Rate</u> | <u>Hours</u>       |
|----------------|---|-------------|--------------------|
|                | deposition re: Guild/Wuthrich; Review discovery emails re: Wuthrich; Draft Response to Motion to Extend Time  |             |                    |
| 8/3/2011 - SN  | Prepare legal memorandum re: Request for Production of City's emails  | \$110.00/hr | 1.70<br>\$187.00   |
| - RAD          | Conference re: discovery matters; Emails re: discovery issues   | \$170.00/hr | 0.90<br>\$153.00   |
| - SCN          | Correspondence with client; Draft Response to Motion to Extend; Correspondence from J. Julius; Review recent Ninth Circuit Holding on Due Process Violation; Edit Response/Declaration; Final pleadings | \$170.00/hr | 3.40<br>\$578.00   |
| 8/4/2011 - SN  | Legal research at law school library re: sample discovery for retaliation and hostile work environment  | \$110.00/hr | 1.30<br>\$143.00   |
| - SCN          | Correspondence from Court; Have Amended Complaint filed; Correspondence with client; Conference with R. Dunn; Discovery research; Review recent case law on retaliation                                 | \$170.00/hr | 2.60<br>\$442.00   |
| - SG           | Prepare Amended Complaint for filing  | \$95.00/hr  | 0.30<br>\$28.50    |
| - RAD          | Emails re: discovery dispute issues; Conference re: discovery disclosures   | \$170.00/hr | 0.70<br>\$119.00   |
| 8/5/2011 - SCN | Conference with DeMello; Outline remaining claims; Draft Discovery  | \$170.00/hr | 2.60<br>\$442.00   |
| 8/8/2011 - SCN | Conference with R. Dunn; Research and draft Response Memorandum to Defendants Proposed List of SPD Personnel to search for discovery; Correspondence with Mehring; Draft Third Set of Discovery         | \$170.00/hr | 6.60<br>\$1,122.00 |
| 8/9/2011 - RAD | Conference re: discovery issues; Emails re: discovery issues  | \$170.00/hr | 1.10<br>\$187.00   |
| - SG           | Format, edit Response to email search list; Revise and final Amended Witness Disclosure; Prepare for filing; Edit and final Third Interrogatories and Requests for Production of Documents to City      | \$95.00/hr  | 0.60<br>\$76.00    |

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|                 |   | <u>Rate</u> | <u>Hours</u>       |
|-----------------|---|-------------|--------------------|
| 8/9/2011 - SCN  | Conference with R. Dunn; Edit/final Response; Edit/final Third Set of Discovery; Correspondence with J. Mehring; Correspondence with J. Jullus; Correspondence with City; Correspondence with T. Cronin; Edit/final Witness List; Prepare for Hearing | \$170.00/hr | 6.00<br>\$1,020.00 |
| 8/10/2011 - SCN | Prepare for Hearing; Hearing; Conference with client  | \$170.00/hr | 1.80<br>\$306.00   |
| 8/12/2011 - SN  | Prepare case synopsis for recent Ninth Circuit Court of Appeals case  | \$110.00/hr | 1.00<br>\$110.00   |
| - SCN           | Draft Opening Statement; Read recent 9th circuit case law on procedural due process v/o   | \$170.00/hr | 3.70<br>\$629.00   |
| 8/14/2011 - SCN | Draft Claim Outline/Witness Outline; Prepare for Dr. Palmer deposition  | \$170.00/hr | 2.30<br>\$391.00   |
| 8/15/2011 - SCN | Conference with R. Dunn; Correspondence with O'Hara; Correspondence with Underwood; Schedule/note Jacobson Deposition; Dr. Palmer Deposition  | \$170.00/hr | 5.50<br>\$935.00   |
| - RAD           | Conference re. deposition schedule and witnesses  | \$170.00/hr | 0.70<br>\$119.00   |
| - SG            | Prepare Second Amended Notice of Deposition of E. Jacobson  | \$95.00/hr  | 0.30<br>\$28.50    |
| 8/16/2011 - SCN | Draft claim list/witness test; Review draft of Dr. Palmer Deposition  | \$170.00/hr | 3.30<br>\$561.00   |
| 8/17/2011 - RAD | Conference re: discovery and pleading issues  | \$170.00/hr | 0.80<br>\$136.00   |
| - SG            | Revise and final letter to E. O'Hara; Telephone call with O'Hara's assistant; Arrange court reporter for deposition   | \$95.00/hr  | 0.10<br>\$9.50     |
| - SCN           | Draft claim/witness list; Conference with R. Dunn; Correspondence with client; Correspondence with City; Review draft Dr. Palmer deposition; Case management; Receive/review pleadings  | \$170.00/hr | 4.50<br>\$765.00   |
| 8/18/2011 - SCN | Review Defendants Memorandum; Shepardize case law. Review labor management relations act of 1947; Conference with R. Dunn; Correspondence   | \$170.00/hr | 6.20<br>\$1,054.00 |

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|                 |  | <u>Rate</u> | <u>Hours</u>       |
|-----------------|--|-------------|--------------------|
|                 | with Julius; Correspondence with Mehring; Correspondence with City Attorney; CR2B i conference; Conference with K. Roberts   |             |                    |
| 8/18/2011 - RAD | Conference re: Discovery Issues; Emails to/from E. O'Hara  | \$170.00/hr | 1.30<br>\$221.00   |
| 8/19/2011 - SCN | Strategize for trial; Correspondence with J Julius; Calendar deadline for Answer to Amended Complaint; Schedule Discovery Hearing; Correspondence with court reporter; Review holding on Motion to Amend; Correspondence with court  | \$170.00/hr | 2.50<br>\$425.00   |
| 8/22/2011 - SCN | Conference with R. Dunn; Correspondence with Court; Correspondence with court reporter; Correspondence with client; Research/draft Response to City's Brief  | \$170.00/hr | 3.20<br>\$544.00   |
| - RAD           | Conference re: Mehring medical records; Record review  | \$170.00/hr | 0.70<br>\$119.00   |
| 8/23/2011 - SCN | Conference with R. Dunn; Correspondence with Jay; Draft claim outline/witness list; Correspondence with City; Correspondence with Court; Shepardize case law cited by City; Review document production for Response Brief; Prepare Opposition to Motion for Protective Order; Strategize | \$170.00/hr | 7.40<br>\$1,258.00 |
| 8/24/2011 - SCN | Research Response to Motion for Summary Judgment; Review charter/civil service rules/RCW; Prepare for Jacobson Deposition; Correspondence with client; Review City's Amended Answer  | \$170.00/hr | 6.80<br>\$1,156.00 |
| 8/25/2011 - SCN | Research Response to Motion for Summary Judgment; Prepare for Jacobson Deposition; Correspondence with JPM   | \$170.00/hr | 5.80<br>\$986.00   |
| 8/26/2011 - RAD | Conference re: Deposition; Conference re: discovery; Emails to E. O'Hara   | \$170.00/hr | 1.00<br>\$170.00   |
| - SCN           | Prepare for Deposition; Deposition of Jacobson; Conference with R. Dunn; Correspondence with client; Correspondence with City; Review City's Response to Summary Judgment  | \$170.00/hr | 5.00<br>\$850.00   |
| 8/28/2011 - SCN | Research Defendants Response case law; Conference with R. Dunn; Research applicability of RCW 41.56  | \$170.00/hr | 3.40<br>\$578.00   |

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
| 8/29/2011 - KWR | Conference with S. Nelson re: Reply to Summary Judgment   | \$250.00/hr | 0.50<br>\$125.00   |
| - RAD           | Conference re: Palmer deposition;<br>Conference re: witness tampering issues  | \$170.00/hr | 1.10<br>\$187.00   |
| - SCN           | Research Defendants Response case law;<br>Conference with R. Dunn; Conference with client; Dr. Palmer Deposition;<br>Correspondence with City Attorney;<br>Conference with K. Roberts   | \$170.00/hr | 8.10<br>\$1,377.00 |
| 8/30/2011 - RAD | Call from client; Call to T. Durkin; Emails to/from E. O'Hara   | \$170.00/hr | 0.90<br>\$153.00   |
| - SCN           | Conference with R. Dunn; Correspondence with client; Research for Response/Reply Briefs   | \$170.00/hr | 5.80<br>\$986.00   |
| 8/31/2011 - SCN | Correspondence with DAN; Conference with R. Dunn  | \$170.00/hr | 0.50<br>\$85.00    |
| - SCN           | Conference with R. Dunn; Correspondence with client; Research for Response/Reply Briefs; Draft Reply Brief  | \$170.00/hr | 8.30<br>\$1,411.00 |
| - RAD           | Call to/from client; Call with T. Durkin  | \$170.00/hr | 1.00<br>\$170.00   |
| 9/1/2011 - SCN  | Conference with R. Dunn; Conference with client; Conference with K. Roberts. Draft Motion to Strike; Draft Response to Motion to Strike; Research ER 801, 901, 902; Have certified copy of Judge Price Order obtained; Draft Reply Memorandum; Review new discovery (150 emails); City correspondence | \$170.00/hr | 9.40<br>\$1,598.00 |
| 9/2/2011 - RAD  | Redraft Summary Judgment Brief; Meeting with client; Conference re: discovery issues  | \$170.00/hr | 4.60<br>\$782.00   |
| - SCN           | Conference with R. Dunn; Edit Reply Brief; Draft Declaration of JPM; Email to Jay; Draft Declaration of S. Nelson; Document review of electronic emails;<br>Correspondence with client; Meet with client; Finalize pleadings; Conference with court reporter  | \$170.00/hr | 7.20<br>\$1,224.00 |
| - SG            | Revise and final Declaration of S. Nelson, Declaration of Mehring   | \$95.00/hr  | 0.50<br>\$47.50    |

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|                |   | <u>Rate</u> | <u>Hours</u>       |
|----------------|---|-------------|--------------------|
| 9/3/2011 - SCN | Research/draft Response to Defendant's Motion for Summary Judgment:   | \$170.00/hr | 2.70<br>\$459.00   |
| 9/4/2011 - SCN | Research/draft Response to Defendants Motion for Summary Judgment; Review Deposition Transcript of Dr. Palmer; Conference with R. Dunn  | \$170.00/hr | 6.20<br>\$1,054.00 |
| 9/5/2011 - RAD | Redraft Reply Brief   | \$170.00/hr | 3.30<br>\$561.00   |
| - SCN          | Research/draft Response to Defendants Motion for Summary Judgment; Draft Objection to Protective Order; Correspondence with client  | \$170.00/hr | 8.00<br>\$1,360.00 |
| 9/6/2011 - RAD | Final Brief; Meeting with client; Conference re: witness tampering issues; Emails from client   | \$170.00/hr | 2.60<br>\$442.00   |
| - SCN          | Research/draft Response to Defendants Motion for Summary Judgment; Edit Response; Conference with R. Dunn; Conference with client; Draft Mehring Declaration; Draft S. Nelson Declaration; Conference with court reporter; Cite to Dr. Palmer Deposition; Voicemail for Attorney General's Office; Client correspondence  | \$170.00/hr | 8.60<br>\$1,462.00 |
| - SG           | Revise, edit and final Response to City's Summary Judgment Motion, Response to Motion for Protective Order, Declaration of S. Nelson, Declaration of Mehring  | \$95.00/hr  | 0.90<br>\$85.50    |
| 9/7/2011 - RAD | Meeting with client; Conference re: discovery issues; Emails from client; Final pleadings   | \$170.00/hr | 2.80<br>\$476.00   |
| - SCN          | Client correspondence; Correspondence with Attorney General's Office; Review Elise Robertson transcripts; Review Wuthrich Transcript; Correspondence with Guild Attorney Julius; Conference with client; Correspondence with FBI; Draft two RCW 9A.72 letters; Conference with R. Dunn; Correspondence with Jennifer Underwood; Research prosecution of RCW 9A.72; Research conspiracy/1983 witness tampering claim | \$170.00/hr | 7.20<br>\$1,224.00 |

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|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
| 9/8/2011 - KP   | Legal research re: whether the action of witness tampering creates an additional 42 U.S.C. § 1985(2) claim for the plaintiff in the case   | \$110.00/hr | 1.70<br>\$187.00   |
| - SCN           | Correspondence with J. Underwood; Correspondence with City Attorney; Correspondence with T. Cronin; Draft Motion to Compel; Draft Motion to Shorten Time; Draft Memorandum to Compel; Draft Declaration (x2); Correspondence with client; Edit client's criminal statement re: witness tampering; Meet with client; Hearing on Motion to Compel; Conference with R. Dunn; Prepare for Hearing on Summary Judgment; Correspondence with FBI | \$170.00/hr | 5.90<br>\$1,003.00 |
| - RAD           | Conference re: discovery issues; Emails re: document dispute; Conference re: Hearing issues  | \$170.00/hr | 2.60<br>\$442.00   |
| - SG            | Revise, edit and Final Motion to Shorten Time, Motion to Compel, Declarations of S. Nelson, Memorandum; Email to counsel; Prepare for filing   | \$95.00/hr  | 1.10<br>\$104.50   |
| 9/9/2011 - SCN  | Conference with client; Correspondence with Tim Cronin; Conference with R. Dunn; Prepare for Hearing; Outline Argument; Attend hearing 1:30 -- 4:20; Conference with FBI; Communications from Underwood; Correspondence with Valera; Correspondence with City Attorney   | \$170.00/hr | 9.20<br>\$1,564.00 |
| - RAD           | Conference re: hearing issues; To Hearing; Meeting with client; Conference re: discovery issues; Emails to T. Cronin   | \$170.00/hr | 4.80<br>\$816.00   |
| 9/10/2011 - SCN | File management; Client communications   | \$170.00/hr | 0.70<br>\$119.00   |
| 9/12/2011 - KWR | Conference with S. Nelson re: discovery issues   | \$250.00/hr | 0.50<br>\$125.00   |
| - SCN           | Draft Trial Management Report; Correspondence with Cronin; Discovery Hearing; Conference with R. Dunn; Client communications; Correspondence J. Underwood; Review Defendants Updated Disclosure of Witnesses   | \$170.00/hr | 6.90<br>\$1,173.00 |

  
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|                 |   | <u>Rate</u> | <u>Hours</u>       |
|-----------------|---|-------------|--------------------|
| 9/12/2011 - RAD | Conference re: discovery issues; Emails to/from T. Cronin; Emails to E. O'Hara  | \$170.00/hr | 2.40<br>\$408.00   |
| 9/13/2011 - SCN | ER 904; Review Discovery Order; Correspondence with client; Conference with R. Dunn; Correspondence with City; Review 1983 case law re: post deprivation hearings; Meet with client re: trial preparation; Script testimony   | \$170.00/hr | 8.50<br>\$1,445.00 |
| - RAD           | Meeting with client; Trial preparation  | \$170.00/hr | 3.50<br>\$595.00   |
| 9/14/2011 - WDM | Conference with S. Nelson re: discovery and trial preparation issues  | \$200.00/hr | 0.40<br>\$80.00    |
| - SCN           | Trial preparation; Discovery Hearing; CR 26i Conference; Communications with City; Communications with Cronin; ER 904; Correspondence with client   | \$170.00/hr | 9.40<br>\$1,598.00 |
| - RAD           | Trial preparation   | \$170.00/hr | 2.00<br>\$340.00   |
| 9/15/2011 - SCN | Trial preparation; Draft Opening Statement; Conference with R. Dunn; ER 904; Client meeting; Draft Summary Judgment Order; Correspondence City re: Deposition of Jay; Document review - documents received today; Draft Motion for Reconsideration  | \$170.00/hr | 8.80<br>\$1,496.00 |
| - RAD           | Pretrial Exhibit review; Conference re: trial strategy issues; Review Jury Instructions   | \$170.00/hr | 2.30<br>\$391.00   |
| - SG            | Assemble Exhibits for ER 904 Notice; Draft Order on Summary Judgment; Telephone call with Court   | \$95.00/hr  | 2.50<br>\$237.50   |
| 9/16/2011 - RAD | Review Trial Exhibits; Emails to/from E O'Hara  | \$170.00/hr | 1.30<br>\$221.00   |
| - SCN           | Conference with R. Dunn; Prepare and finalize ER 904; Meet with client; Review documents for Supplemental Response; Correspondence with Tim Cronin; Correspondence with City; Draft Memorandum for Reconsideration; Research regarding qualified immunity and summary judgment, Review Defendants ER 904 List; Draft Jury Instructions; Draft Joint Trial Management Report | \$170.00/hr | 9.80<br>\$1,666.00 |

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|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
| 9/16/2011 - SG  | Review, edit and final ER 904 Notice;<br>Format Memorandum   | \$95.00/hr  | 2.70<br>\$256.50   |
| 9/17/2011 - RAD | Work on Pretrial Statement; Work on Jury<br>Instructions; Work on witness testimony and<br>exhibits; Conference re: trial preparation<br>matters   | \$170.00/hr | 5.70<br>\$969.00   |
| - SCN           | Conference with R. Dunn; Edit/final<br>Memorandum for Reconsideration; Draft<br>Jury Instructions; Research  | \$170.00/hr | 7.50<br>\$1,275.00 |
| 9/18/2011 - RAD | Trial Preparation; Conference re: trial<br>issues; Work on Jury Instructions and<br>Pre-Trial Report   | \$170.00/hr | 3.90<br>\$663.00   |
| - SCN           | Edit Joint Trial Management Report;<br>Research; Edit Jury Instructions  | \$170.00/hr | 3.90<br>\$663.00   |
| 9/19/2011 - SN  | Deliver Plaintiff's Trial Exhibits and Witness<br>List, Trial Management Report, Motion for<br>Reconsideration, and Declaration of S.<br>Nelson to Courthouse for filing and copies<br>to Judge O'Connor; Deliver copies to City<br>Attorney's Office  | \$110.00/hr | 0.60<br>\$66.00    |
| - RAD           | Conference re: discovery issues; Emails<br>to/from E. O'Hara   | \$170.00/hr | 2.30<br>\$391.00   |
| - SCN           | Review City's Proposed Joint Trial<br>Management Report; Meet with client re:<br>trial preparation; Finalize Memorandum re:<br>Reconsideration; Draft Declaration; Draft<br>Proposed Orders; Meet/confer with O'Hara<br>re: Joint Trial Management Report; Draft<br>Preliminary Objections to Defendants<br>Exhibits; Finalize pleadings re:<br>Reconsideration; Conference with R. Dunn;<br>Conference with K. Roberts;<br>Correspondence with Jennifer Underwood | \$170.00/hr | 7.50<br>\$1,275.00 |
| - SG            | Draft and final Witness List, Exhibit List;<br>Prepare Exhibits for exchange; Draft<br>Proposed Order, Revise, edit and final<br>Motion for Reconsideration  | \$95.00/hr  | 1.50<br>\$142.50   |
| 9/20/2011 - SCN | Correspondence with City; Prepare for<br>Discovery Hearing; Discovery Hearing;<br>Conference with R. Dunn; Telephone call<br>with Milt Rowland; Meet with client (x2);<br>Draft Supplemental Discovery Responses;<br>Medical Authorization for Dr. Palmer  | \$170.00/hr | 5.60<br>\$952.00   |

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|                 |  | Rate        | Hours              |
|-----------------|--|-------------|--------------------|
| 9/20/2011 - RAD | Conference re: discovery issues; Work on Trial preparation   | \$170.00/hr | 2.20<br>\$374.00   |
| - SG            | Email release to J. Underwood  | \$95.00/hr  | 0.10<br>\$9.50     |
| 9/21/2011 - SCN | Draft Supplemental Discovery Response; Correspondence with client; Conference with R. Dunn; Draft Objection to Defendant's Proposed Order on Second Motion for Summary Judgment; Review Defendants Memorandum for Reconsideration; Conference with Elizabeth Gibbons re: ALADS; Review ALADS pleadings; Telephone call with client; Shepardize defendants' case citations; Correspondence with J. Underwood; Correspondence with court; Correspondence with City; Correspondence with Spokesman; Meet with client; Final Objection to Proposed Order | \$170.00/hr | 7.90<br>\$1,343.00 |
| - RAD           | Trial preparation; Call to M. Rowland; Redraft Response pleading   | \$170.00/hr | 2.80<br>\$476.00   |
| - SG            | Revise Objections to Proposed Order; Prepare for filing  | \$95.00/hr  | 0.50<br>\$47.50    |
| 9/22/2011 - SN  | Draft legal documents re: Motions in Limine  | \$110.00/hr | 1.50<br>\$165.00   |
| - AC            | Review Evidence for ER 904 Objections  | \$90.00/hr  | 3.30<br>\$297.00   |
| - RAD           | Conference re: Management Report; Emails to E. O'Hara; Emails to M. Rowland; Email to T. Cronin  | \$170.00/hr | 1.60<br>\$272.00   |
| - SCN           | Correspondence with City; Conference with R. Dunn; Correspondence with Court; Draft Motion for Reconsideration Discovery Master; Draft Declaration for Reconsideration of Discovery Master; Telephone call with client; Voicemail from client; Correspondence with Underwood; Review Dr. Palmer's documents  | \$170.00/hr | 4.80<br>\$816.00   |
| - SG            | Revise and final Objection; Draft Motion for Review of Discovery Master's Order, Proposed Order  | \$95.00/hr  | 1.60<br>\$152.00   |

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|                 |   | <u>Rate</u> | <u>Hours</u>       |
|-----------------|---|-------------|--------------------|
| 9/23/2011 - AC  | Wrote brief re: ER 904 Objections to Defense's Evidence   | \$90.00/hr  | 3.40<br>\$306.00   |
| - SCN           | Conference with R. Dunn; Review City's Motion to Amend Caption; Review City's Motion to Compel Deposition/Protective Order; Draft Objection to Motion for Protective Order/Motion to Compel; Research; Draft Supporting Declaration; Review Deposition Transcript; Prepare for Hearing; Hearing | \$170.00/hr | 7.20<br>\$1,224.00 |
| - SG            | Revise and final Response to Motion for Protective Order and Motion to Compel, Declaration of S. Nelson; Revise and final Motion for Review of Discovery Master Order, Declaration of S. Nelson, Memorandum, Proposed Order; Prepare for filing   | \$95.00/hr  | 2.20<br>\$209.00   |
| - RAD           | To Court for Hearing; Meeting with client; Conference re: hearing and trial preparation issues  | \$170.00/hr | 4.20<br>\$714.00   |
| 9/24/2011 - RAD | Emails to/from T. Cronin  | \$170.00/hr | 0.50<br>\$85.00    |
| - SCN           | Correspondence with City; Correspondence with Cronin  | \$170.00/hr | 0.40<br>\$68.00    |
| 9/25/2011 - RAD | Trial Preparation   | \$170.00/hr | 1.40<br>\$238.00   |
| - SCN           | Draft Response to Defendant's Motion for Reconsideration  | \$170.00/hr | 2.20<br>\$374.00   |
| 9/26/2011 - SN  | Draft legal documents re: Motions in Limine   | \$110.00/hr | 3.00<br>\$330.00   |
| - SG            | Format Response to Motion for Reconsideration   | \$95.00/hr  | 0.30<br>\$28.50    |
| - RAD           | Emails to/from T. Cronin  | \$170.00/hr | 0.80<br>\$136.00   |
| - SCN           | Draft Trial Memorandum; Telephone call with client (x2); Conference with R. Dunn; Review Deposition Transcript and draft outline for Cronin; Conference with Sunshine regarding Motion in Limine  | \$170.00/hr | 7.50<br>\$1,275.00 |

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 LAWYERS

Jay Mehring

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 FEDERAL TAX ID 91-1578231

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|                 |   | Rate        | Hours              |
|-----------------|---|-------------|--------------------|
| 9/27/2011 - SG  | Draft Objection to ER 904 Documents; Revise, edit and final Response to Motion for Reconsideration; Draft and final Declaration of S. Nelson  | \$95.00/hr  | 1.20<br>\$114.00   |
| - RAD           | Conference re: discovery issues; Emails to/from E. O'Hara and T. Cronin; Conference re: discovery issues  | \$170.00/hr | 1.30<br>\$221.00   |
| - SCN           | Edit Response to Motion for Reconsideration; Draft Declaration; Shepardize cited case law; Correspondence with City; Correspondence with Discovery Master; Review new discovery; Draft Trial Memorandum/research retaliation claim; Draft discovery timeline/outline  | \$170.00/hr | 9.40<br>\$1,598.00 |
| 9/28/2011 - RAD | Work on Response Briefs; Emails re: discovery; Conference re: discovery issues  | \$170.00/hr | 2.70<br>\$459.00   |
| - SCN           | Draft Reply in Support of Motion for Reconsideration; Correspondence with client; Correspondence with Discovery Master; Review Discovery Order; Review Discovery of 9/15 compare with prior   | \$170.00/hr | 3.60<br>\$612.00   |
| - SG            | Convert Deposition Transcript excerpts to PDF; Email to Cronin; Trial preparation   | \$95.00/hr  | 2.50<br>\$237.50   |
| 9/29/2011 - RAD | Review Exhibits for Objection; Redraft Motions in Limine; Hearing with T. Cronin, Emails to/from E. O'Hara; Redraft Reply Brief   | \$170.00/hr | 5.40<br>\$918.00   |
| - SCN           | Draft Reply re: Motion for Reconsideration; Conference with R. Dunn; Draft Response Motion to Amend Caption; Correspondence with Cronin; Draft Trial Brief; Discovery Hearing; Conference with client; Draft Trial Memorandum Introduction, Facts, Outrage; Review CR 30 re: depositions of experts; Communications with Cronin | \$170.00/hr | 8.30<br>\$1,411.00 |
| - SG            | Revise and final Response to Motion to Amend Caption, Response to Motion for Review and Reply to Motion for Reconsideration and Declarations of S. Nelson   | \$95.00/hr  | 2.50<br>\$237.50   |
| 9/30/2011 - RAD | Trial preparation: Redraft Trial Brief; Final Motions in Limine; Emails to/from O'Hara; Emails to/from T. Cronin  | \$170.00/hr | 3.40<br>\$578.00   |

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|                 |  | <u>Rate</u> | <u>Hours</u>       |
|-----------------|--|-------------|--------------------|
| 9/30/2011 - SCN | Edit/final Trial Memorandum; Draft Declaration in Support of Trial Memorandum; Edit/final ER 904 Objections; Edit/draft/final Motions in Limine; Conference with R. Dunn; Conference with client; Communications with City; Communications with Cronin; Review documents/screen shots; Preview defendants pleadings  | \$170.00/hr | 8.30<br>\$1,411.00 |
| - MCO           | Review and final Memorandum in Support of Motions in Limine  | \$95.00/hr  | 0.20<br>\$19.00    |
| - SG            | Revise and final Objections to ER 904; Revise and final Trial Memorandum and Declaration of S. Nelson; Revise and final Supplemental Motions in Limine; Revise and final Reply to Motion for Review; Prepare Joint Management Trial Report for filing  | \$95.00/hr  | 3.20<br>\$304.00   |
| 10/1/2011 - RAD | Meeting with client; Witness preparation; Conference re: discovery issues; E-mails to T. Cronin; Emails from O'Hara  | \$170.00/hr | 6.40<br>\$1,088.00 |
| - SCN           | Correspondence with City; Correspondence with Court; Conference with client; Review City's Motion in Limine; Correspondence from Jay; Correspondence from Cronin   | \$170.00/hr | 1.70<br>\$289.00   |
| 10/2/2011 - RAD | Trial Preparation  | \$170.00/hr | 8.80<br>\$1,496.00 |
| - SCN           | Correspondence with City; Correspondence with Court; Correspondence from client; Conference with R. Dunn; Draft Admission Table; Draft Loudernail Table; List needed Motions in Limine; Work on Opening Statement; Draft Objection to Protective Order/final; Review policies re: undercover officers  | \$170.00/hr | 7.40<br>\$1,258.00 |
| 10/3/2011 - SCN | Draft Reply to Dr. Palmer Response; Draft Reply to Defendants Response; Draft Second Motion in Limine; Edit Admissions Table; Draft Offer of Proof; Review documents/screen shots from defendant; Correspondence with City; Review Order re: Deposition of Dr. Green; Review Trial Subpoenas; Review RCW 5.56; Review documents for 2010 administrative leave; Review Jacobson deposition; Meet with | \$170.00/hr | 8.40<br>\$1,428.00 |

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|                 |   | <u>Rate</u> | <u>Hours</u>        |
|-----------------|---|-------------|---------------------|
|                 | client and R. Dunn; Review/sign Def. Summary Judgment Order   |             |                     |
| 10/3/2011 - MCO | Emails to TV crews (x3) with information from Jay   | \$95.00/hr  | 0.10<br>\$9.50      |
| - RAD           | Trial Preparation; Meeting with client; Deposition preparation of client; Deposition of client  | \$170.00/hr | 13.40<br>\$2,278.00 |
| - SG            | Trial Subpoenas; Email to O'Hara; Miscellaneous trial preparation   | \$95.00/hr  | 1.50<br>\$142.50    |
| 10/4/2011 - MCO | Telephone call from Sheila at Attorney General's Office; Conference with R. Dunn; Telephone call to Sheila  | \$95.00/hr  | 0.10<br>\$9.50      |
| - RAD           | Trial Preparation; Work on Trial management Report; Emails to/from City Attorneys   | \$170.00/hr | 12.00<br>\$2,040.00 |
| - SCN           | Draft/edit Supplemental Motions in Limine; Final Trial Subpoenas; Correspondence with Wutrich; Edit/final Reply Memorandums; Meet with opposing re: Joint Trial Management Report; Draft/edit Joint Trial Management Report; Correspondence with City; Correspondence with client; Correspondence with Underwood; Correspondence with Demeilo                 | \$170.00/hr | 8.80<br>\$1,156.00  |
| - SG            | Prepare list of emails not produced; Miscellaneous trial preparation; Revise and final Trial Subpoenas to E. Wutrich, Dr. Palmer, E. Jacobson, Kirkpatrick; Revise and final Notice to Attend Trial to Kirkpatrick; Prepare for filing  | \$95.00/hr  | 1.80<br>\$171.00    |
| 10/5/2011 - RAD | Trial Preparation; Emails to/from City's Attorneys  | \$170.00/hr | 11.70<br>\$1,989.00 |
| - GRH           | Researching 1983 damage claims  | \$175.00/hr | 3.50<br>\$612.50    |
| - SCN           | Correspondence with McClure; Correspondence with J. Julius; Edit Supplemental Motions in Limine; Client correspondence; Draft Supplemental Exhibit List; Conference with R. Dunn; Review WPI 14.03; Object to Proposed Order Containing "reckless"; Draft Memorandum to Compel Deposition of Dr. Green; Draft Declaration in Support of Memorandum to Compel; | \$170.00/hr | 8.80<br>\$1,496.00  |

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|                 |   | <u>Rate</u> | <u>Hours</u>        |
|-----------------|---|-------------|---------------------|
|                 | Draft Motion to Shorten Time; Draft Declaration in Support Motion to Shorten Time; Draft Jury Questionnaire; Research Response to Motion in Limine; Draft Supplemental Jury Instructions  |             |                     |
| 10/5/2011 - SG  | Revise and final Joint Management Report; Email to Court; Miscellaneous trial preparation; Draft and final Plaintiff's Supplemental Motions in Limine, Note for Hearing, Motion to Shorten Time, Motion for Review of DM Order; Revise and final Memorandum re: Plaintiff's Supplemental Motions in Limine, Memorandum in Support of Review of DM Order, Declarations of S. Nelson; Prepare Plaintiff's Supplemental Trial Exhibit List | \$95.00/hr  | 1.50<br>\$142.50    |
| 10/8/2011 - RAD | Trial preparation; Hearing preparation; To Court for Hearing; Emails to/from City Attorneys; Final pleadings  | \$170.00/hr | 12.60<br>\$2,142.00 |
| - GRH           | Researching 1983 damage claims  | \$175.00/hr | 6.75<br>\$1,181.25  |
| - SCN           | Prepare for Hearings; Draft Supplemental Jury Instructions; Attend Hearings; Edit Joint Trial Management Report; Conference with client; Conference with R. Dunn; Correspondence with City Attorneys; Correspondence with Jennifer Underwood; Review Exhibits for redaction; Correspondence with court stenographer; Edit opening   | \$170.00/hr | 8.40<br>\$1,428.00  |
| - SG            | Prepare for Pretrial; Work on Trial Exhibits; Emails  | \$95.00/hr  | 1.50<br>\$142.50    |
| 10/7/2011 - RAD | Trial preparation; Hearing preparation; To Court; Meeting with client; Emails to/from M. Rowland  | \$170.00/hr | 11.00<br>\$1,870.00 |
| - MCO           | Work on Jury Instructions - cited and uncited and index   | \$95.00/hr  | 1.00<br>\$95.00     |
| - GRH           | Researching 1983 damage claims  | \$175.00/hr | 3.50<br>\$612.50    |
| - SCN           | Edit Opening Statement; Conference with R. Dunn; Edit Joint Trial Management Report; Client correspondence; Edit Trial Exhibits/Objections; Conference with Adam re: Response to Motion in Limine;  | \$170.00/hr | 8.90<br>\$1,513.00  |

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|                  |   | <u>Rate</u> | <u>Hours</u>        |
|------------------|---|-------------|---------------------|
|                  | Conference with client; Correspondence with Underwood; Prepare for Court; Edit Jury Instructions; Correspondence with Court; Attend Trial Conference; Correspondence with O'Hara; Correspondence with Rowland   |             |                     |
| 10/7/2011 - AC   | Drafted legal documents re: Opposition to City's Motions in Limine  | \$90.00/hr  | 2.00<br>\$180.00    |
| - SG             | Revise and final Subpoena to DeMello; Research John Pilcher; Prepare Subpoena to J. Pilcher; Arrange service; Prepare Amended Trial Exhibit List; Prepare for filing; Miscellaneous trial preparation   | \$95.00/hr  | 2.70<br>\$256.50    |
| 10/8/2011 - RAD  | Trial preparation; Meeting with client; Emails to/from Milt Rowland   | \$170.00/hr | 14.50<br>\$2,465.00 |
| - SCN            | Correspondence with Underwood; Correspondence with DeMello; Meet with client; Conference with R. Dunn; Draft Supplemental Motions in Limine; Draft Appendix A -- Motion in Limine Index; Review Defendants Trial Exhibits for needed redactions/Motions in Limine; Draft Order re: Motion in Limine; Draft Objections to Defendants Motion in Limine; Practice Opening Statement; Edit Opening                                  | \$170.00/hr | 10.00<br>\$1,700.00 |
| 10/9/2011 - RAD  | Trial preparation   | \$170.00/hr | 13.50<br>\$2,295.00 |
| - SCN            | Correspondence with McClure; Correspondence with DeMello; Meet with client; Conference with R. Dunn; Edit Supplemental Motions in Limine; Edit Appendix A -- Motion in Limine Index; Edit Order re: Motion in Limine; Edit Objections to Defendants Motion in Limine; Practice Opening Statement; Edit Opening; Pull newsclips/Videos on Chief; Draft Testimony Outline for Ernie Wuthrich; Draft Testimony Outline for DeMello | \$170.00/hr | 8.00<br>\$1,360.00  |
| 10/10/2011 - GRH | Researching 1983 damage claims and drafting memorandum for R. Dunn  | \$175.00/hr | 7.50<br>\$1,312.50  |
| - SCN            | Practice/edit opening; Conference with R. Dunn; Draft questioning for Wuthrich; Review exhibits for demonstrative exhibits; Pull video clips on Chief; Voicemail from Underwood office re: Dr. Palmer; Trial  | \$170.00/hr | 12.70<br>\$2,159.00 |

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|                  |  | Rate        | Hours               |
|------------------|--|-------------|---------------------|
|                  | preparation of Ernie; Draft DeMello questions; Draft Dr. Palmer questions  |             |                     |
| 10/10/2011 - RAD | Final Pleadings; Trial preparation; Ernie Wuthrich Trial preparation   | \$170.00/hr | 15.20<br>\$2,584.00 |
| - SG             | Edit, revise and final Second Supplemental Motions in Limine, Memorandum, Order, Index, Response to Defendant's Motions in Limine; Work on Defendants' Exhibits; Miscellaneous trial preparation   | \$95.00/hr  | 2.70<br>\$256.50    |
| 10/11/2011 - GRH | Researching municipal liability under 1983 claim and re-drafting memorandum for R. Dunn  | \$175.00/hr | 8.00<br>\$1,400.00  |
| - KP             | Drafting Reply to Defendants' Opposition to Plaintiff's Motions in Limine  | \$110.00/hr | 4.70<br>\$517.00    |
| - SCN            | Conference with R. Dunn; Edit DeMello questioning; Draft Response to Motion to Amend/Stay; Pull Washington case law on Monell claims. Conference with Garrett; Conference with Adam re: case law on malicious pros; Conference with Kaaren re: Reply in Support of Motion in Limine; Draft outline of DeMello Exhibits; Review Defendants Jury Instructions; Draft Objections to Instructions; Correspondence with Court; Correspondence with Milt R.; Correspondence with City; Review newly delivered discovery documents; Conference with client; Conference with K. Roberts and W. Mortensen re: jury instructions; Prepare for Dr. Green deposition | \$170.00/hr | 12.10<br>\$2,057.00 |
| - RAD            | Trial Preparation; Meeting with client; Deposition Preparation for Dr. D. Green; Emails to/from City Attorneys   | \$170.00/hr | 13.60<br>\$2,312.00 |
| - AC             | Trial preparation: Highlighted exhibits for Trial; Legal research re: Elements of Malicious Prosecution  | \$90.00/hr  | 8.20<br>\$738.00    |
| - SG             | Miscellaneous trial preparation; Response to Motion to Amend; Several telephone calls with City; Telephone call with Judge Price's court reporter; Second Amended Exhibit List; Prepare Subpoena Duces Tecum to Dr. Green; Arrange service of process; Order large exhibits  | \$95.00/hr  | 2.40<br>\$228.00    |

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|                  |  | Rate        | Hours               |
|------------------|--|-------------|---------------------|
| 10/12/2011 - KP  | Drafting Reply to Defendants' Opposition to Plaintiff's Motions in Limine  | \$110.00/hr | 0.90<br>\$99.00     |
| - SN             | Legal research re: HIPAA disclosure of medical records for "litigation purposes"   | \$110.00/hr | 3.00<br>\$330.00    |
| - GRH            | Researching municipal liability and damages under 1983 claim and re-drafting memorandum for S. Nelson and R. Dunn  | \$175.00/hr | 6.00<br>\$1,050.00  |
| - SCN            | Conference with R. Dunn; Practice opening; Edit/draft opening; Edit/research Reply in Support Motions in Limine; Correspondence with City; Review medical records for Dr. Green Deposition; Draft Jury Instructions; Edit Jury Questionnaire; Edit Joint Trial Management Report Tables on witness times; Review damage component; Confer with K. Roberts; Conference with W. Mortensen; Draft voir dire | \$170.00/hr | 11.10<br>\$1,887.00 |
| - RAD            | Deposition of Dr. Green; Trial preparation of K. DeMello; Trial preparation  | \$170.00/hr | 14.80<br>\$2,516.00 |
| - SG             | Trial preparation; Match defendant's exhibits to defendant's witnesses; Revise and final Reply to Motions in Limine, Declaration of S. Nelson  | \$85.00/hr  | 2.50<br>\$237.50    |
| 10/13/2011 - MCO | Prepare Order for Court today; Work on direct of Mehring for R. Dunn   | \$95.00/hr  | 0.50<br>\$47.50     |
| - RAD            | Trial preparation; Hearing preparation; To Court for two Hearings; Final pleadings   | \$170.00/hr | 13.00<br>\$2,210.00 |
| - GRH            | Researching municipal liability and damages under 1983 claim and re-drafting memorandum for Susan Nelson and Bob Dunn  | \$175.00/hr | 6.00<br>\$1,050.00  |
| - AC             | Trial preparation: Highlighted Exhibits for Trial  | \$90.00/hr  | 4.20<br>\$378.00    |
| - SCN            | Draft/edit Opening; Prepare for Hearing; Outline argument against Defendant's Motion in Limine; Court Hearings; Draft Response to Motion for Stay; Court Hearing; Draft testimony outline for Dr. Palmer; Conference with R. Dunn; Meet with client; Trial preparation of Dr. Palmer   | \$170.00/hr | 13.40<br>\$2,278.00 |

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|                  |   | Rate        | Hours               |
|------------------|---|-------------|---------------------|
| 10/13/2011 - SG  | Trial preparation, Research Protective Order; Emails to Court; Revise and final Response to Motion to Stay, Declaration of S. Nelson  | \$95.00/hr  | 2.50<br>\$237.50    |
| 10/14/2011 - RAD | Trial preparation; Meeting with client  | \$170.00/hr | 14.40<br>\$2,448.00 |
| - MCO            | Trial preparation   | \$95.00/hr  | 0.40<br>\$38.00     |
| - AC             | Trial preparation: Highlighted Exhibits for Trial   | \$90.00/hr  | 2.00<br>\$180.00    |
| - SCN            | Draft/edit Opening; Review damages aspect; Draft correspondence for City; Conference with R. Dunn; Meet with client; Review Exhibit List; Correspondence from City; Edit DeMello questioning; Edit Palmer questioning; Practice Opening                       | \$170.00/hr | 10.60<br>\$1,802.00 |
| - SG             | Trial preparation; Un-redact plaintiff's exhibits; Revise Order re: Motions in Limine; Email to Court; Prepare Second Supplemental Exhibit List; Miscellaneous conferences with Orange Legal re: Exhibits; Deposition Transcripts; Format Voir Dire Questions | \$95.00/hr  | 4.00<br>\$380.00    |
| 10/15/2011 - RAD | Trial preparation; Meeting with client  | \$170.00/hr | 15.20<br>\$2,584.00 |
| - SCN            | Practice opening; Edit opening; Conference with R. Dunn; Draft Voir Dire; Draft Special Jury Instructions; Draft Offer of Proof re: Retaliation/Chief; Correspondence with City; Review Defendants Witness List   | \$170.00/hr | 8.90<br>\$1,513.00  |
| - SG             | Miscellaneous trial preparation; Work on Trial Exhibits; Work on Direct Examination   | \$95.00/hr  | 6.00<br>\$570.00    |
| 10/16/2011 - SCN | Draft/edit opening; Jay trial preparation; Special Jury Instruction; Review YouTube of press announcement not guilty  | \$170.00/hr | 9.00<br>\$1,530.00  |
| - RAD            | Trial preparation; Meeting with client  | \$170.00/hr | 17.00<br>\$2,890.00 |
| 10/17/2011 - KWR | Work on opening with S. Nelson  | \$250.00/hr | 1.50<br>\$375.00    |

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|              |     | <u>Rate</u>  | <u>Hours</u>        |
|--------------|-----|--|---------------------|
| 10/17/2011 - | NDK | Strategy conference with S. Nelson re: Opening   | 1.50<br>\$315.00    |
| -            | RAD | Trial, Meeting with client   | 17.30<br>\$2,941.00 |
| -            | JTP | Prepare with S. Nelson opening statement; Conference re: opening statement   | 1.50<br>\$315.00    |
| -            | WDM | Strategy conference re: opening statement  | 1.50<br>\$300.00    |
| -            | GRH | Observing S. Nelson's opening statement and providing feedback   | 1.50<br>\$262.50    |
| -            | SCN | Draft/edit opening; Practice opening; Review with team; Begin Jury Selection, Draft Response to Defendants Proposed Order; Draft Response to Defendants' Supplemental Motions in Limine; Draft Response to Motion in Limine Regarding Ad Hoc Committee; Edit opening; Travel to/from court house; Conference with client | 14.20<br>\$2,414.00 |
| -            | AC  | Legal research re: whether a municipality can be held liable for punitive damages in a 1983 claim  | 2.00<br>\$180.00    |
| -            | SG  | Prepare new exhibits for Trial; Prepare Third Supplemental Exhibit List; Revise and final letter to O'Hara and Rowland; Trial preparation; Work with Exhibits  | 2.40<br>\$228.00    |
| 10/18/2011 - | MRT | Work with S. Nelson re: opening statement  | 1.00<br>\$190.00    |
| -            | NDK | Strategy conference with S. Nelson re: opening; Conference with R. Dunn re: same; Review legal research re: judicial misconduct in excusing a juror  | 1.50<br>\$315.00    |
| -            | GRH | Observing Susan Nelson's opening statement and providing feedback  | 1.00<br>\$175.00    |
| -            | SN  | Legal research re: Jury Selection and potential judicial misconduct in selection process   | 3.50<br>\$385.00    |
| -            | MCO | Work on Responses to Motions in Limine (x3); Research re: Kirkpatrick; Email to KHQ  | 1.00<br>\$95.00     |

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|              |   | Rate        | Hours               |
|--------------|---|-------------|---------------------|
| 10/18/2011 - | SCN   |             |                     |
|              | Draft/edit Opening; Practice Opening; Review with team; Jury Selection; Final pleadings; Hearing on Defendants' Objection to Plaintiffs Proposed Order on Motions in Limine; Edit Opening; Travel to/from court house; Conference with client; Review new discovery | \$170.00/hr | 14.10<br>\$2,397.00 |
| -            | RAD   |             |                     |
|              | Trial; Meeting with client  | \$170.00/hr | 17.00<br>\$2,890.00 |
| -            | SG  |             |                     |
|              | Revise and final Brief; Prepare Fourth Supplemental Exhibit List; Email to Court; Work with oversized exhibits/prepare for trial  | \$95.00/hr  | 1.30<br>\$123.50    |
| 10/19/2011 - | KWR   |             |                     |
|              | Work on Opening   | \$250.00/hr | 1.00<br>\$250.00    |
| -            | SCN   |             |                     |
|              | Draft/edit Opening; Practice Opening; Review with team; Jury Selection; Opening Statement; Set up for Exhibits; Direct of E. Wuthrich; Correspondence with J Underwood; Correspondence with K. Demello; Conference with R. Dunn                                     | \$170.00/hr | 14.10<br>\$2,397.00 |
| -            | RAD   |             |                     |
|              | Trial; Meeting with client  | \$170.00/hr | 17.20<br>\$2,924.00 |
| -            | NDK   |             |                     |
|              | Strategy conference re: opening   | \$210.00/hr | 1.10<br>\$231.00    |
| -            | SG  |             |                     |
|              | Prepare new exhibits for Trial  | \$95.00/hr  | 0.80<br>\$76.00     |
| 10/20/2011 - | SCN   |             |                     |
|              | Correspondence with DeMello; Conference with Ernie Wuthrich; Conference with client; Conference with R. Dunn; Trial; Update Exhibits  | \$170.00/hr | 10.80<br>\$1,836.00 |
| -            | RAD   |             |                     |
|              | Trial; Meeting with client  | \$170.00/hr | 15.60<br>\$2,652.00 |
| -            | SG  |             |                     |
|              | Trial preparation - make and prepare new exhibits for trial; Revise Order on Motions in Limine; Prepare Fourth Supplemental Exhibit List; Review Declarations and Interrogatory Answers   | \$95.00/hr  | 1.00<br>\$95.00     |
| 10/21/2011 - | RAD   |             |                     |
|              | Trial; Meeting with client  | \$170.00/hr | 12.00<br>\$2,040.00 |

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|                  |  | <u>Rate</u> | <u>Hours</u>        |
|------------------|--|-------------|---------------------|
| 10/21/2011 - SCN | Review pre-employment psych evaluation; Email client; Conference with R. Dunn; Review FOIA; Correspondence with Ken; Draft Motion in Limine; Review Declarations/Depositions/Criminal Trial Transcript; Identify Exhibits for Monday's testimony; Research criminality of disclosure of undercover officer ID; Research relevance of pay in 1983 case; Supplemental Exhibits | \$170.00/hr | 8.70<br>\$1,479.00  |
| - SG             | Prepare Fifth Supplemental Exhibit List; Prepare Trial Subpoena to L. Tofsrud; Prepare additional transcripts for court; Telephone call to court reporter  | \$95.00/hr  | 0.80<br>\$76.00     |
| 10/22/2011 - RAD | Trial; Meeting with client   | \$170.00/hr | 15.50<br>\$2,635.00 |
| - SCN            | Review for E. Jacobson; Outline retaliation documents; Correspondence with K. DeMello; Research punitive damages/relevance of defendants worth; Research FOIA violation of exemption to disclosure; Final Motion in Limine Number 25; Amend DeMello question list; Correspondence with city re: E. Jacobson and J. Pilcher   | \$170.00/hr | 8.10<br>\$1,377.00  |
| 10/23/2011 - RAD | Trial; Meeting with client   | \$170.00/hr | 14.00<br>\$2,380.00 |
| - SCN            | Edit/final Motion in Limine Number 25; Draft/final Declaration; Draft/final Motion Regarding Defendants Salary; Conference with R. Dunn; Conference with client; Correspondence with Underwood; Correspondence with City; Prepare for direct of Pilcher; Prepare for direct of DeMello   | \$170.00/hr | 6.50<br>\$1,105.00  |
| 10/24/2011 - RAD | Trial; Meeting with client   | \$170.00/hr | 16.80<br>\$2,822.00 |
| - SN             | To Courthouse re: file Plaintiffs Motion and Memorandum to Admit Testimony; Copies to Judge O'Connor   | \$110.00/hr | 0.10<br>\$11.00     |
| - SG             | Review Plaintiffs Exhibits and match to defendants' witnesses; Revise Mehring direct outline; Additional exhibits  | \$95.00/hr  | 3.40<br>\$323.00    |

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 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID 91-1578231

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|                  |   | <u>Rate</u> | <u>Hours</u>        |
|------------------|---|-------------|---------------------|
| 10/24/2011 - SCN | Review Defendants Second Set of Interrogatories/Requests for Production of Documents; Prepare for Court; Research damages; Trial; Prepare for DeMello; Trial; Conference with R. Dunn; Conference with client   | \$170.00/hr | 11.00<br>\$1,870.00 |
| 10/25/2011 - RAD | Trial; Meeting with client  | \$170.00/hr | 14.80<br>\$2,482.00 |
| - SG             | Revise direct testimony outline; Work on trial exhibits   | \$95.00/hr  | 1.50<br>\$142.50    |
| - SCN            | Research/draft Special Jury Instructions; Prepare for Trial; Conference with client; Conference with R. Dunn; Trial   | \$170.00/hr | 10.10<br>\$1,717.00 |
| 10/26/2011 - RAD | Trial; Meeting with client  | \$170.00/hr | 17.40<br>\$2,958.00 |
| - SCN            | Research collateral source rule; Prepare for direct of Dr. Palmer; Conference with R. Dunn; Conference with K. Roberts re: direct; Court; Motion for Judgment as a Matter of Law on Punitive Damages; Research punitive damages; Correspondence with Defendants | \$170.00/hr | 11.00<br>\$1,870.00 |
| 10/27/2011 - RAD | Trial; Meeting with client  | \$170.00/hr | 15.30<br>\$2,601.00 |
| - MCO            | Letter to Dr. Palmer; Final Brief on Punitive Damages   | \$95.00/hr  | 0.20<br>\$19.00     |
| - SG             | Mark, photocopy and prepare additional exhibits for trial   | \$95.00/hr  | 2.10<br>\$199.50    |
| - AC             | Legal research re: compensatory and punitive damages available for 1983 First Amendment violations  | \$90.00/hr  | 4.00<br>\$360.00    |
| - SCN            | Research collateral source rule; Prepare for direct of Dr. Palmer; Conference with R. Dunn; Conference with K. Roberts re: direct; Court; Motion for Judgment as a Matter of Law on Punitive Damages; Research punitive damages; Correspondence with Defendants | \$170.00/hr | 11.20<br>\$1,904.00 |
| 10/28/2011 - RAD | Meeting with client; Witness preparation; Emails to opposing counsel; Work on closing   | \$170.00/hr | 13.50<br>\$2,295.00 |

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 FEDERAL TAX ID # 91-578231

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|                  |   | Rate        | Hours               |
|------------------|---|-------------|---------------------|
| 10/28/2011 - JCB | Conference re: strategy   | \$340.00/hr | 1.00<br>\$340.00    |
| - KWR            | Research re: closings on punitives  | \$250.00/hr | 1.50<br>\$375.00    |
| - SG             | Revise Mehring witness/exhibit reference document   | \$95.00/hr  | 0.50<br>\$47.50     |
| - SCN            | Research/draft Jury Instructions; Read Defendant's Brief re: disclosure of medical information; Correspondence with defense counsel; Review Witness List; Review/shepardize Defendants' Jury Instructions; Conference with R. Dunn; Pick up Witness Depositions/Trial Testimony from Court; Correspondence with J. Underwood; Correspondence with client; Review Idaho verdict for 3.7 million; Conference with clerk re: jury verdict assignment | \$170.00/hr | 9.80<br>\$1,666.00  |
| 10/29/2011 - RAD | Trial preparation: Meeting with client  | \$170.00/hr | 12.80<br>\$2,176.00 |
| - SCN            | Correspondence with Rowland; Conference with client; Conference with R. Dunn; Prepare for Defendants' witnesses; Pull Exhibits/Deposition Transcripts/Trial Transcripts/Declarations  | \$170.00/hr | 8.80<br>\$1,496.00  |
| 10/30/2011 - RAD | Trial preparation; Work on Jury Instructions and witness preparation  | \$170.00/hr | 12.30<br>\$2,091.00 |
| - SCN            | Correspondence with Court; Edit/draft Jury Instructions; Prepare for defendants trial witnesses; Edit/draft Special Verdict Form  | \$170.00/hr | 7.20<br>\$1,224.00  |
| 10/31/2011 - SG  | Revise and final Response Brief; Jury instruction comparison  | \$95.00/hr  | 1.70<br>\$161.50    |
| - SCN            | Prepare for defendants trial witnesses; Conference with client; Draft Response to Defendants Motion re: Disclosure of Medical Information; Review/contrast jury instructions; Create table; To/from Court; Morning Hearings; Conference with R. Dunn; Trial; Prepare for Barkley  | \$170.00/hr | 12.40<br>\$2,108.00 |
| - RAD            | Trial; Meeting with client  | \$170.00/hr | 16.70<br>\$2,839.00 |

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FEDERAL TAX ID # 91-1578231

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|                 |  | Rate        | Hours               |
|-----------------|--|-------------|---------------------|
| 11/1/2011 - AC  | Legal research re: compensatory and punitive damages available for 1983 First Amendment violations; Drafted memo re: Summary of all 15 cases and their verdict amounts regarding punitive and compensatory damages for 1983 claims violating due process and First amendment | \$90.00/hr  | 5.80<br>\$522.00    |
| - KWR           | Research re: punitive closing argument   | \$250.00/hr | 2.50<br>\$625.00    |
| - JCB           | Research punitive damages law; Assist in preparation of closing  | \$340.00/hr | 5.00<br>\$1,700.00  |
| - MCO           | Work on Defendant's Trial Exhibit binders  | \$95.00/hr  | 0.20<br>\$19.00     |
| - RAD           | Trial; Meeting with client   | \$170.00/hr | 15.80<br>\$2,686.00 |
| - SCN           | Prepare for Barkley; Trial; Jury Instructions; Meet/conference with Milt   | \$170.00/hr | 11.00<br>\$1,870.00 |
| 11/2/2011 - KWR | Research re: closing argument  | \$250.00/hr | 1.00<br>\$250.00    |
| - JCB           | Conference re: closing; Research punitive damages; Assist in closing preparation   | \$340.00/hr | 7.80<br>\$2,652.00  |
| - GRH           | Review and compare Jury Instructions   | \$175.00/hr | 0.50<br>\$87.50     |
| - MCO           | Closing  | \$95.00/hr  | 0.10<br>\$9.50      |
| - RAD           | To Court for Hearing; Legal research; Jury instructions conference; Prepare Closing Argument   | \$170.00/hr | 18.50<br>\$3,145.00 |
| - SCN           | Prepare for Court; CR 50 Motions; Edit/craft Jury Instructions; Jury Instructions with Court; Draft Memorandum on FOIA/PPA Exemptions; Review exhibits for closing -- bullet issues  | \$170.00/hr | 15.00<br>\$2,550.00 |
| 11/3/2011 - MRT | Review CR 50 Judgment as a Matter of Law Order; Review same  | \$190.00/hr | 0.50<br>\$95.00     |
| - MRT           | To/from Court for closings; Strategy re: same  | \$190.00/hr | 3.00<br>NO CHARGE   |

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 FEDERAL TAX ID # 91-1578231

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|                                    |  | <u>Rate</u>    | <u>Hours</u>        |
|------------------------------------|--|----------------|---------------------|
| 11/3/2011 - KWR                    | Assist with preparation of closing and rebuttal argument   | \$250.00/hr    | 2.50<br>\$625.00    |
| - RAD                              | Work on Closing Argument; Trial; Meeting with client   | \$170.00/hr    | 9.20<br>\$1,564.00  |
| - SCN                              | Edit Memorandum/draft Jury Instruction; Conference with R. Dunn; Motion regarding Jury Instruction; Closing arguments; Conference with R. Dunn and client; Conference with Court re: Jury questions (x2); Conference with client | \$170.00/hr    | 8.50<br>\$1,445.00  |
| 11/4/2011 - RAD                    | Meeting with client; Conference re: Jury Verdict and post trial issues   | \$170.00/hr    | 4.30<br>\$731.00    |
| - KWR                              | Conference with R. Dunn re: post judgment issues   | \$250.00/hr    | 1.00<br>\$250.00    |
| - SCN                              | Correspondence with Court; Take jury verdict; Correspondence with client; Conference with jurors; Correspondence with Rowland; Correspondence with City; Conference with R. Dunn; Review proposed CR 60 Order                    | \$170.00/hr    | 4.30<br>\$731.00    |
| For professional services rendered |  | <u>1989.95</u> | <u>\$327,189.25</u> |
| Additional Charges:                |  |                |                     |

|                                     | <u>Qty/Price</u> |        |
|-------------------------------------|------------------|--------|
| 1/10/2011 - Westlaw-Legal Research  | 1<br>20.59       | 20.59  |
| - Photocopy Charge(s)               | 643<br>0.20      | 128.60 |
| 1/11/2011 - Long Distance Charge(s) | 1<br>0.64        | 0.64   |
| 2/1/2011 - Westlaw-Legal Research   | 1<br>108.09      | 108.09 |
| 2/7/2011 - Photocopy Charge(s)      | 36<br>0.20       | 7.20   |
| - Long Distance Charge(s)           | 1<br>0.40        | 0.40   |

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0706  
 FEDERAL TAX ID # 91-1578237

|                                    | <u>Qty/Price</u> | <u>Amount</u> |
|------------------------------------|------------------|---------------|
| 2/7/2011 - Photocopy Charge(s)     | 425<br>0.20      | 85.00         |
| 2/11/2011 - Postage Charge(s)      | 1<br>0.61        | 0.61          |
| 3/1/2011 - Westlaw-Legal Research  | 1<br>158.82      | 158.82        |
| 3/7/2011 - Long Distance Charge(s) | 1<br>0.73        | 0.73          |
| 3/8/2011 - Photocopy Charge(s)     | 5<br>0.20        | 1.00          |
| 3/9/2011 - Photocopy Charge(s)     | 390<br>0.20      | 78.00         |
| 3/11/2011 - Postage Charge(s)      | 1<br>0.44        | 0.44          |
| 3/15/2011 - Mileage                | 4<br>0.51        | 2.04          |
| 4/4/2011 - Westlaw-Legal Research  | 1<br>16.59       | 16.59         |
| - Mileage                          | 4.6<br>0.51      | 2.35          |
| 4/11/2011 - Postage Charge(s)      | 1<br>3.80        | 3.80          |
| 4/12/2011 - Photocopy Charge(s)    | 845<br>0.20      | 169.00        |
| - Long Distance Charge(s)          | 1<br>0.38        | 0.38          |
| 5/3/2011 - Westlaw-Legal Research  | 1<br>132.18      | 132.18        |
| 5/5/2011 - Mileage                 | 3<br>0.51        | 1.53          |
| 5/9/2011 - Photocopy Charge(s)     | 4<br>0.20        | 0.80          |
| - Postage Charge(s)                | 1<br>0.44        | 0.44          |

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 FEDERAL TAX ID 97-1578231

|  | <u>Qty/Price</u> | <u>Amount</u> |
|--|------------------|---------------|
| 6/9/2011 - Photocopy Charge(s)   | 344<br>0.20      | 68.80         |
| 6/7/2011 - Westlaw-Legal Research  | 1<br>45.27       | 45.27         |
| - Hand Deliver Documents   | 2<br>10.00       | 20.00         |
| 6/9/2011 - Photocopy Charge(s)   | 6<br>0.20        | 1.20          |
| - Photocopy Charge(s)  | 236<br>0.20      | 47.20         |
| 6/10/2011 - Fax Charge(s)  | 3<br>1.00        | 3.00          |
| 7/1/2011 - Westlaw-Legal Research  | 1<br>84.76       | 84.76         |
| 7/5/2011 - Hand Deliver Documents  | 6<br>10.00       | 60.00         |
| - Hand Deliver Documents   | 7<br>15.00       | 105.00        |
| - Postage Charge(s)  | 1<br>5.44        | 5.44          |
| 7/7/2011 - Long Distance Charge(s)   | 1<br>1.72        | 1.72          |
| 7/8/2011 - Photocopy Charge(s)   | 3,093<br>0.20    | 618.60        |
| 7/11/2011 - Photocopy Charge(s)  | 381<br>0.20      | 72.20         |
| 7/12/2011 - Fax Charge(s)  | 39<br>1.00       | 39.00         |
| 7/13/2011 - Deposition Expense-Snover Realtime Reporting                     | 1<br>443.00      | 443.00        |
| 7/27/2011 - Professional Services Rendered-Mullin, Cronin, Casey & Blair, PS | 1<br>146.75      | 146.75        |
| 8/1/2011 - Hand Deliver Documents  | 6<br>10.00       | 60.00         |

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 711 NORTH POST, SUITE 300 ■ SPOKANE, WASHINGTON 99201-0705  
 FEDERAL TAX ID 81-1578231

|  | <u>Qty/Price</u> | <u>Amount</u> |
|--|------------------|---------------|
| 8/1/2011 - Hand Deliver Documents                        | 6<br>15.00       | 90.00         |
| 8/2/2011 - Westlaw-Legal Research                        | 1<br>230.37      | 230.37        |
| 8/4/2011 - Mark Sanchez re: Transcript                   | 1<br>42.00       | 42.00         |
| - Deposition Expense-Snover Realtime Reporting           | 1<br>609.50      | 609.50        |
| 8/5/2011 - Long Distance Charge(s)                       | 1<br>3.33        | 3.33          |
| 8/8/2011 - Postage Charge(s)                             | 1<br>8.44        | 8.44          |
| 8/9/2011 - Photocopy Charge(s)                           | 1,354<br>0.20    | 270.80        |
| 8/10/2011 - Photocopy Charge(s)                          | 12<br>0.20       | 2.40          |
| 8/29/2011 - Deposition Expense-Snover Realtime Reporting | 1<br>268.50      | 268.50        |
| - Deposition Expense-Snover Realtime Reporting           | 1<br>268.50      | 268.50        |
| 9/1/2011 - Westlaw-Legal Research                        | 1<br>563.31      | 563.31        |
| 9/2/2011 - Hand Deliver Documents                        | 2<br>10.00       | 20.00         |
| - Hand Deliver Documents                                 | 4<br>15.00       | 60.00         |
| - Spokane Superior Court                                 | 1<br>5.25        | 5.25          |
| 9/7/2011 - Photocopy Charge(s)                           | 44<br>0.20       | 8.80          |
| - Deposition Expense-Snover Realtime Reporting           | 1<br>401.50      | 401.50        |
| - Deposition Expense-Snover Realtime Reporting           | 1<br>388.50      | 388.50        |

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 FEDERAL TAX ID # 91-157823

|  | <u>Qty/Price</u> | <u>Amount</u> |
|--|------------------|---------------|
| 9/9/2011 - Long Distance Charge(s)                                 | 1<br>0.49        | 0.49          |
| - Parking  | 1<br>15.00       | 15.00         |
| 9/12/2011 - Postage Charge(s)                                      | 1<br>2.72        | 2.72          |
| 9/13/2011 - Photocopy Charge(s)                                    | 2,126<br>0.20    | 425.20        |
| 10/1/2011 - Westlaw-Legal Research                                 | 1<br>875.63      | 875.63        |
| 10/3/2011 - Hand Deliver Documents                                 | 6<br>10.00       | 60.00         |
| - Hand Deliver Documents   | 9<br>15.00       | 135.00        |
| - Witness Fee  | 1<br>10.65       | 10.65         |
| 10/6/2011 - Long Distance Charge(s)                                | 1<br>4.43        | 4.43          |
| - Professional Services Rendered-Mullin, Cronin, Casey & Blair, PS | 1<br>2,385.00    | 2,385.00      |
| 10/7/2011 - Witness Fee  | 1<br>10.00       | 10.00         |
| - Witness Fee  | 1<br>10.00       | 10.00         |
| 10/10/2011 - Service of Process Fee-Mark Sanchez                   | 1<br>54.00       | 54.00         |
| - Photocopy Charge(s)  | 12,934<br>0.20   | 2,586.80      |
| - Postage Charge(s)  | 1<br>5.15        | 5.15          |
| 10/11/2011 - Photocopy Charge(s)                                   | 876<br>0.20      | 175.20        |
| - Deposition Expense-Snover Realtime Reporting                     | 1<br>212.00      | 212.00        |

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A PROFESSIONAL SERVICE CORPORATION  
 BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0735  
 FEDERAL TAX ID: 01-1578231

|  | Qty/Price     | Amount   |
|--|---------------|----------|
| 10/12/2011 - Service of Process Fee-Eastern Washington Attorney Services | 1<br>40.00    | 40.00    |
| 10/13/2011 - Deposition Expense-KVS Productions                          | 1<br>85.00    | 85.00    |
| 10/14/2011 - Parking   | 1<br>15.00    | 15.00    |
| - Deposition Expense-Snover Realtime Reporting                           | 1<br>639.00   | 639.00   |
| 10/20/2011 - Cord for trial presentation                                 | 1<br>42.39    | 42.39    |
| 10/21/2011 - Photocopy Charge(s)   | 1<br>1.25     | 1.25     |
| 10/24/2011 - Trial Parking   | 1<br>15.00    | 15.00    |
| 10/26/2011 - Cord for Court Exhibit                                      | 1<br>31.52    | 31.52    |
| - Professional Services Rendered-Deanette Palmer, PhD                    | 1<br>1,375.00 | 1,375.00 |
| 10/31/2011 - Hand Deliver Documents                                      | 8<br>10.00    | 80.00    |
| - Hand Deliver Documents   | 12<br>15.00   | 180.00   |
| - Photocopy Charge(s)-Orange LT  | 1<br>895.55   | 895.55   |
| 11/2/2011 - Westlaw-Legal Research                                       | 1<br>1,328.39 | 1,328.39 |
| 11/4/2011 - Photocopy Charge(s)  | 524<br>0.20   | 104.80   |
| 11/7/2011 - Long Distance Charge(s)                                      | 1<br>7.02     | 7.02     |
| 11/8/2011 - Postage Charge(s)  | 1<br>0.44     | 0.44     |
| - Photocopy Charge(s)  | 6,221<br>0.20 | 1,644.20 |

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FEDERAL TAX ID: 91-1578231

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|                                    | <u>Amount</u>             |
|------------------------------------|---------------------------|
| Total costs                        | \$19,434.20               |
|                                    | <u>Amount</u>             |
| For professional services rendered | 1989.95      \$346,603.45 |

**MEHRING V. CITY OF SPOKANE, et al  
CASE COST SUMMARY**

| 2009                    | COST            |
|-------------------------|-----------------|
| PHOTOCOPIES             | \$451.40        |
| POSTAGE                 | \$7.80          |
| WESTLAW                 | \$11.51         |
| LONG DISTANCE           | \$0.29          |
| MEDICAL RECORDS         | \$61.40         |
| FILING FEES             | \$230.00        |
| SERVICE OF PROCESS FEES | \$145.00        |
| <b>TOTAL</b>            | <b>\$907.40</b> |

| 2010                    | COST               |
|-------------------------|--------------------|
| PHOTOCOPIES             | \$2,278.84         |
| POSTAGE                 | \$45.33            |
| WESTLAW                 | \$681.98           |
| LONG DISTANCE           | \$5.63             |
| DEPOSITION EXPENSE      | \$6,569.90         |
| SERVICE OF PROCESS FEES | \$125.00           |
| FAX FEES                | \$9.00             |
| DISCOVERY MASTER        | \$888.25           |
| HEARING TRANSCRIPT FEES | \$35.00            |
| JURY DEMAND FEE         | \$250.00           |
| <b>TOTAL</b>            | <b>\$10,888.93</b> |

| 2011                        | COST               |
|-----------------------------|--------------------|
| PHOTOCOPIES                 | \$7,392.60         |
| POSTAGE                     | \$27.48            |
| WESTLAW                     | \$3,564.00         |
| LONG DISTANCE               | \$19.14            |
| DEPOSITION EXPENSE          | \$3,315.50         |
| SPOKANE SUPERIOR COURT FEES | \$5.25             |
| SERVICE OF PROCESS FEES     | \$40.00            |
| FAX FEES                    | \$42.00            |
| DISCOVERY MASTER            | \$2,531.75         |
| HEARING TRANSCRIPT FEES     | \$96.00            |
| WITNESS FEE                 | \$30.65            |
| MILEAGE                     | \$5.92             |
| HAND DELIVER DOCUMENTS      | \$870.00           |
| PARKING                     | \$45.00            |
| COURT EXHIBIT               | \$73.91            |
| DR. PALMER                  | \$1,375.00         |
| <b>TOTAL</b>                | <b>\$19,434.20</b> |

| 2011 COSTS PAID BY CLIENT     | COST              |
|-------------------------------|-------------------|
| PAID BY JPM TO DISCOVERY MSTR | \$1,068.25        |
| <b>TOTAL</b>                  | <b>\$1,068.25</b> |

| 2009 TO 11/8/2011             | COST               |
|-------------------------------|--------------------|
| PHOTOCOPIES                   | \$10,122.84        |
| POSTAGE                       | \$80.61            |
| WESTLAW                       | \$4,257.49         |
| LONG DISTANCE                 | \$25.06            |
| DEPOSITION EXPENSE            | \$9,885.40         |
| SPOKANE SUPERIOR COURT FEES   | \$5.25             |
| SERVICE OF PROCESS FEES       | \$310.00           |
| FAX FEES                      | \$51.00            |
| DISCOVERY MASTER              | \$3,420.00         |
| HEARING TRANSCRIPT FEES       | \$131.00           |
| WITNESS FEE                   | \$30.65            |
| MILEAGE                       | \$5.92             |
| HAND DELIVER DOCUMENTS        | \$870.00           |
| PARKING                       | \$45.00            |
| COURT EXHIBIT                 | \$73.91            |
| DR. PALMER                    | \$1,375.00         |
| FILING FEES                   | \$230.00           |
| MEDICAL RECORDS               | \$61.40            |
| JURY DEMAND FEE               | \$250.00           |
| PAID BY JPM TO DISCOVERY MSTR | \$1,068.25         |
| <b>TOTAL</b>                  | <b>\$32,298.78</b> |

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A PROFESSIONAL SERVICE CORPORATION

BANNER BANK BUILDING, 111 NORTH POST, SUITE 300 • SPOKANE, WASHINGTON 99201-0705  
FEDERAL TAX ID 91-1579231

Invoice submitted to:

Jay Mehring  
PO Box 48663  
Spokane, WA 99228

December 21, 2011

In Reference To: Anne Kirkpatrick and City of Spokane

### Professional Services

|                 |   | <u>Rate</u> | <u>Hours</u>     |
|-----------------|---|-------------|------------------|
| 11/7/2011 - RAD | Conference re: Post Trial Motions; Work on Fee Petition   | \$170.00/hr | 1.80<br>\$306.00 |
| - SCN           | Conference with R. Dunn; Cost Bill/Attorney Fee; Correspondence with Dr. Palmer   | \$170.00/hr | 3.50<br>\$595.00 |
| 11/8/2011 - SG  | Draft Second Order for Judgment on pleadings  | \$95.00/hr  | 0.40<br>\$38.00  |
| - WDM           | Conference re: attorney fee petition issues   | \$200.00/hr | 0.30<br>\$60.00  |
| - RAD           | Emails from M. Rowland; Work on Post Trial Pleadings; Conference re: Post Trial Motions   | \$170.00/hr | 1.80<br>\$306.00 |
| - SCN           | Correspondence with J. Julius; Correspondence with Dr. Palmer; Correspondence with Rowland; Conference with N. Kovarik; Conference with K. Roberts; | \$170.00/hr | 5.20<br>\$884.00 |
| 11/9/2011 - RAD | Email from M. Rowland; Emails to/from the Court; Conference re: injunction issues   | \$170.00/hr | 1.30<br>\$221.00 |
| - SCN           | Correspondence with J. Julius; Correspondence with Court and defense counsel; Research re: costs in 1988 recovery; Research reasonableness of       | \$170.00/hr | 4.80<br>\$816.00 |
| - SG            | Revisions to R. Dunn's Affidavit re: Fees   | \$95.00/hr  | 0.20<br>\$19.00  |



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 FEDERAL TAX ID 91-1578231

|                  |   | <u>Rate</u> | <u>Hours</u>       |
|------------------|---|-------------|--------------------|
| 11/10/2011 - KWR | Revise Fact Section of Attorney Fee Memorandum  | \$250.00/hr | 1.00<br>\$250.00   |
| - RAD            | Work on Post Trial Motions  | \$170.00/hr | 1.70<br>\$289.00   |
| - SCN            | Correspondence with Snover;<br>Correspondence with Cronin;<br>Correspondence with client; Review billing entries; Research taxable consequences;                      | \$170.00/hr | 7.30<br>\$1,241.00 |
| - SG             | Draft and final Judgment, Notices of Presentment; Revise and final Order on Judgment as a Matter of Law   | \$95.00/hr  | 1.50<br>\$142.50   |
| 11/11/2011 - KWR | Revise Attorney Fees and Costs Memorandum   | \$250.00/hr | 1.50<br>\$375.00   |
| - SG             | Revisions to Affidavit of R. Dunn in Support of Motion for Fees/Costs   | \$95.00/hr  | 0.20<br>\$19.00    |
| 11/14/2011 - RAD | Final Memorandum re: Fee Petition; Review of Defendants' new trial pleadings; Conference re: Judgment issues  | \$170.00/hr | 3.20<br>\$544.00   |
| - SCN            | Correspondence with client; Conference with R. Dunn and K. Roberts re: fees and costs; Check rule re: time for filing for fees and costs; Research municipalities and | \$170.00/hr | 5.40<br>\$918.00   |
| 11/15/2011 - KWR | Research re: community hourly rates/review Declarations by local attorneys and Darell Scott award of reasonable fee of \$520/hour                                     | \$250.00/hr | 1.00<br>\$250.00   |
| - SCN            | Conference with R. Dunn re: Post Trial pleadings; Draft/edit R. Dunn Affidavit Fees and Costs; Review case law regarding objective support for reasonable fees; Edit  | \$170.00/hr | 6.40<br>\$1,088.00 |
| - SG             | Revisions to Affidavit of R. Dunn   | \$95.00/hr  | 0.30<br>\$28.50    |
| - RAD            | Work on Post Trial pleadings; Conference re: Fee Petition issues  | \$170.00/hr | 2.70<br>\$459.00   |
| 11/16/2011 - KWR | Strategy conference with S. Nelson re: Fee Motion; Review case  | \$250.00/hr | 1.00<br>\$250.00   |
| - SCN            | Conference with R. Dunn; Edit Memorandum for Fees/Costs; Review Broyles pleading; Correspondence with Stephanie Bloomfield; Correspondence with Bookkeeper; Review    | \$170.00/hr | 6.00<br>\$1,020.00 |

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 LAWYERS

Jay Mehring

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 FEDERAL TAX ID # 1576231

|                  |   | <u>Rate</u> | <u>Hours</u>     |
|------------------|---|-------------|------------------|
| 11/16/2011 - SG  | Research; Assemble bills submitted to client for direct pay   | \$95.00/hr  | 0.40<br>\$38.00  |
| 11/17/2011 - RAD | Call to S. Troppmann; Work on post trial pleadings and affidavits   | \$170.00/hr | 2.80<br>\$476.00 |
| - SCN            | Conference with R. Dunn; Edit Memorandum re: Fees/Costs; Edit/draft Declaration in Support of Fees and Costs; Review RPC 1.5  | \$170.00/hr | 2.50<br>\$425.00 |
| 11/18/2011 - RAD | Meeting with client; Review M. Rowland belated pleadings; Conference re: Hearing issues; To Court for Hearing; Conference re: Order presentment issues; Emails to/from M. | \$170.00/hr | 3.90<br>\$663.00 |
| - SCN            | Conference with R. Dunn; Conference with client; Edit Declaration in Support of Memorandum for Fees/Costs; Court; Edit Judgment; Correspondence with M.                   | \$170.00/hr | 5.80<br>\$986.00 |
| - SG             | Revise and final Order re: Judgment as a Matter of Law  | \$95.00/hr  | 0.10<br>\$9.50   |
| 11/20/2011 - RAD | Legal research re: Judgment formats and entry of judgments; Prepare pleading re: Entry of Judgment  | \$170.00/hr | 3.90<br>\$663.00 |
| - SCN            | Correspondence with Mill; Correspondence with Court and defendants; Conference with R. Dunn; Edit Response to Defendants Opposition; Edit Judgment                        | \$170.00/hr | 2.20<br>\$374.00 |
| 11/21/2011 - RAD | Prepare for Court Hearing; To Court for Hearing; Meeting with client  | \$170.00/hr | 2.60<br>\$442.00 |
| - SCN            | Correspondence with Mill; Review press release re: undercover status; Hearing on Judgment; Conference with client   | \$170.00/hr | 2.80<br>\$476.00 |
| 11/22/2011 - RAD | Work on Fee Declarations  | \$170.00/hr | 1.30<br>\$221.00 |
| - SCN            | Conference with R. Dunn re: fees/costs  | \$170.00/hr | 0.20<br>\$34.00  |
| 11/23/2011 - RAD | Meeting with S. Troppmann; Conference re: Post Trial pleadings  | \$170.00/hr | 2.30<br>\$391.00 |
| - SCN            | Conference with R. Dunn re: fees/costs; Final Billable Summary; Conference with book keeper; Review costs; Final pleadings and Declarations                               | \$170.00/hr | 2.80<br>\$476.00 |



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|            |       | <u>Rate</u>   | <u>Hours</u>     |
|------------|-------|---|------------------|
| 11/28/2011 | - RAD | Final Fee Petition pleadings; Emails to/from S. Troppmann   | 1.80<br>\$306.00 |
|            | - SCN | Telephone call with client; Final Declarations  | 0.40<br>\$68.00  |
| 11/29/2011 | - RAD | Telephone call from client  | 0.40<br>\$68.00  |
|            | - SCN | Final pleadings; Conference with bookkeeper; Client communications  | 0.60<br>\$102.00 |
|            | - SG  | Revisions to Memorandum for Award of Fees and Costs and Affidavit of R. Dunn; Draft Note for Hearing and Motion   | 1.00<br>\$95.00  |
| 11/30/2011 | - SCN | Correspondence with client; File management   | 2.10<br>\$357.00 |
|            | - SG  | Draft Order and Amended Judgment; Revise and final Memorandum, Affidavit of R. Dunn, Note, Motion, Order, Amended Judgment; Prepare for filing              | 2.50<br>\$237.50 |
|            | - RAD | Emails to/from M. Rowland; Conference re: discovery issues re: Fee Petition   | 1.10<br>\$187.00 |
| 12/1/2011  | - RAD | Emails to/from M. Rowland; Conference re: Motion Reply issues   | 1.60<br>\$272.00 |
|            | - SCN | Correspondence with client; Pull discovery for client; Review appeal timelines; Correspondence with Rowland; Conference with R. Dunn                        | 2.00<br>\$340.00 |
| 12/2/2011  | - SCN | Review Defendant's Motion for New Trial; Research; Correspondence with Crystal H. re: transcripts   | 1.20<br>\$204.00 |
|            | - SG  | Order Transcript of 11/21 Hearing   | 0.10<br>\$9.50   |
| 12/5/2011  | - RAD | Review Defendant's post trial pleadings; Conference re: Response to Defendants' pleadings and issues  | 1.30<br>\$221.00 |
|            | - SCN | Client correspondence; Conference with R. Dunn; Research Response to Motion for New Trial; Pleadings from opposing; Draft Response to Motion for New Trial; | 3.80<br>\$646.00 |

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FEDERAL TAX ID # 1576231

Jay Mehring

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|                  |   | <u>Rate</u> | <u>Hours</u>       |
|------------------|---|-------------|--------------------|
| 12/6/2011 - SCN  | Draft Response to Defendants' Post Trial Memorandum; Research; Conference with K. Roberts; Conference with R. Dunn  | \$170.00/hr | 6.90<br>\$1,173.00 |
| 12/7/2011 - RAD  | Final Post Trial Motions Response Brief; Final Response Brief re: Fees  | \$170.00/hr | 4.50<br>\$765.00   |
| - SCN            | Draft Response to Defendants' Post Trial Memorandum; Research; Draft Response to Motion Setting Scheduling Order re: Fee Petition; Research discovery re: fees/costs; | \$170.00/hr | 6.30<br>\$1,071.00 |
| 12/8/2011 - SG   | Revise and final Response to Motion for Discovery Schedule on Fee Petition  | \$95.00/hr  | 0.40<br>\$38.00    |
| - SCN            | Edit Response to Post Trial Brief; Edit Response to Motion for Scheduling Fee Briefing, etc.; Correspondence with court reporter; Skim closing argument               | \$170.00/hr | 3.00<br>\$510.00   |
| 12/9/2011 - RAD  | Email from M. Rowland; Conference re: Petition issues   | \$170.00/hr | 0.60<br>\$102.00   |
| - SG             | Revise and final other two Briefs; Draft and final Declaration of S. Nelson; Prepare for filing   | \$95.00/hr  | 1.30<br>\$123.50   |
| - SCN            | Final Response to Post Trial Motion; Final Response to Motion for Scheduling Order; Review/final Declaration; Draft Response to Motion to Correct Judgment; Research; | \$170.00/hr | 6.40<br>\$1,088.00 |
| 12/10/2011 - SCN | Review Defendants' pleadings; Review our Memorandum and supporting documents to verify service upon Defendants  | \$170.00/hr | 0.50<br>\$85.00    |
| 12/11/2011 - RAD | Review pleadings from M. Rowland  | \$170.00/hr | 1.40<br>\$238.00   |
| 12/12/2011 - SCN | Research; Draft Response to Defendants Opposition to Plaintiffs' Request for Fees/Costs; Correspondence with client   | \$170.00/hr | 5.50<br>\$935.00   |
| 12/13/2011 - RAD | Final Reply Brief; Emails to/from M. Rowland; Conference re: Briefing Responses   | \$170.00/hr | 2.30<br>\$391.00   |
| - SCN            | Research; Draft Reply in Support Fees/Costs   | \$170.00/hr | 6.20<br>\$1,054.00 |



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FEDERAL TAX ID #1-1675231

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|              |     | <u>Rate</u>  | <u>Hours</u>                      |
|--------------|-----|--|-----------------------------------|
| 12/14/2011 - | SCN | Research; Edit/final Reply Memorandum;<br>Review Supplemental Memorandum from<br>Defendants; Correspondence with Rowland;<br>Review discovery issues; Review Reply                 | \$170.00/hr<br>6.80<br>\$1,156.00 |
| -            | SG  | Revise and final Reply re: Motion for Fees<br>and Costs  | \$95.00/hr<br>0.80<br>\$76.00     |
| 12/15/2011 - | WDM | Conference with S. Nelson re: attorney fee<br>and discovery motions issues   | \$200.00/hr<br>0.30<br>\$60.00    |
| -            | SCN | Draft Declaration; Edit/final Declaration; Draft<br>outlines for Defendant's Motion Scheduling<br>Order, Defendant's Motion to Correct<br>Judgment, Defendant's Post-Trial Motion, | \$170.00/hr<br>6.50<br>\$1,105.00 |
| -            | RAD | Hearing preparation  | \$170.00/hr<br>2.20<br>\$374.00   |
| -            | SG  | Revise and final Supplemental Declaration of<br>S. Nelson re: Fees   | \$95.00/hr<br>0.50<br>\$47.50     |
| 12/16/2011 - | RAD | Hearing preparation; To Court for Hearing  | \$170.00/hr<br>4.80<br>\$816.00   |
| -            | SCN | Conference with R. Dunn; Prepare for<br>Hearings; Hearings; Conference with client   | \$170.00/hr<br>5.50<br>\$935.00   |
| 12/18/2011 - | RAD | Legal research re: segregation of claims for<br>Fee Petition; review billing Memorandums<br>re: Segregation  | \$170.00/hr<br>3.40<br>\$578.00   |
| -            | SCN | Review billing statements for segregation;<br>Review Wynn v. Earin   | \$170.00/hr<br>1.50<br>\$255.00   |
| 12/19/2011 - | KP  | Legal research re: legislative history of RCW<br>4.56.110(3)(a),(b)  | \$110.00/hr<br>1.10<br>\$121.00   |
| -            | RAD | Review of Billing entries per Court's<br>Direction; Conference re: Supplemental Fee<br>Petition  | \$170.00/hr<br>2.40<br>\$408.00   |
| -            | SCN | Review billing statements for segregation;<br>Conference with R. Dunn; Draft billing<br>summaries; Draft Declaration; Client<br>correspondence                                     | \$170.00/hr<br>5.60<br>\$952.00   |
| 12/20/2011 - | RAD | Conference re: Supplemental pleadings for<br>Fee Petition  | \$170.00/hr<br>0.80<br>\$136.00   |

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 FEDERAL TAX ID 91-167823

|                                    |  | Rate        | Hours            |
|------------------------------------|--|-------------|------------------|
| 12/21/2011 - KP                    | Legal research re: legislative history of RCW 4.56.110(3)(a),(b); California laws on interest rates for punitive damages   | \$110.00/hr | 3.00<br>\$330.00 |
| - SCN                              | Correspondence with Rowland; Review Notice of Appeal; Conference with R. Dunn  | \$170.00/hr | 0.80<br>\$136.00 |
| 12/22/2011 - RAD                   | Review billing records for segregation   | \$170.00/hr | 1.70<br>\$289.00 |
| - SCN                              | Correspondence with Rowland; Conference with R. Dunn; Review billing records   | \$170.00/hr | 1.50<br>\$255.00 |
| 12/23/2011 - RAD                   | E-mail from Rowland; Review of time records  | \$170.00/hr | 1.80<br>\$306.00 |
| - SCN                              | Conference with R. Dunn; Conference with K. Roberts; Draft Subpoena Duces Tecum and final; Review billing records, attorney profiles, rates; Research local rates; | \$170.00/hr | 3.80<br>\$646.00 |
| For professional services rendered |  | 212.10      | \$35,461.50      |

Additional Charges :

|                                     |       | Qty/Price |          |
|-------------------------------------|-------|-----------|----------|
| 11/7/2011 - Long Distance Charge(s) | 1     | 7.02      | 7.02     |
| 11/8/2011 - Postage Charge(s)       | 1     | 0.44      | 0.44     |
| - Photocopy Charge(s)               | 8,221 | 0.20      | 1,644.20 |
| 11/28/2011 - Hand Deliver Documents | 1     | 10.00     | 10.00    |
| - Hand Deliver Documents            | 4     | 15.00     | 60.00    |
| 12/1/2011 - Westlaw-Legal Research  | 1     | 499.48    | 499.48   |
| 12/7/2011 - Long Distance Charge(s) | 1     | 0.68      | 0.68     |
| 12/8/2011 - Photocopy Charge(s)     | 1,531 | 0.20      | 306.20   |

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FEDERAL TAX ID 91-1578231

|  | <u>Qty/Price</u> | <u>Amount</u>      |
|--|------------------|--------------------|
| 12/9/2011 - Photocopy Charge(s)-Spokane Superior Court | 1<br>9.75        | 9.75               |
| Total costs  |                  | <u>\$2,537.77</u>  |
| For professional services rendered                     | <u>212.10</u>    | <u>\$37,999.27</u> |

**MEHRING V. CITY OF SPOKANE, et al  
SUMMARY OF POST TRIAL FEES AND COSTS**

| 11/5/2011 TO 12/23/2011 | HOURS         | CURRENT RATE | TOTAL              |
|-------------------------|---------------|--------------|--------------------|
| Robert A. Dunn          | 61.40         | \$400.00     | \$24,560.00        |
| Kaarin Praxel           | 4.10          | \$110.00     | \$451.00           |
| Wesley D. Mortensen     | 0.60          | \$200.00     | \$120.00           |
| Susan C. Nelson         | 131.80        | \$185.00     | \$24,383.00        |
| Kevin W. Roberts        | 4.50          | \$250.00     | \$1,125.00         |
| Shellie Garrett         | 9.70          | \$95.00      | \$921.50           |
|                         |               |              |                    |
| ATTORNEY/LAW CLERK      | 202.40        |              | \$50,639.00        |
| STAFF TIME              | 9.70          |              | \$921.50           |
| <b>TOTAL</b>            | <b>212.10</b> |              | <b>\$51,560.50</b> |

| 11/8/2011 TO 12/23/2011 | COST            |
|-------------------------|-----------------|
| PHOTOCOPIES             | \$315.95        |
| WESTLAW                 | \$499.48        |
| LONG DISTANCE           | \$0.68          |
| HAND DELIVER DOCUMENTS  | \$70.00         |
| <b>TOTAL</b>            | <b>\$886.11</b> |



# APPENDIX H

| Foster Pepper PLLC                               |                         |       |             |
|--|-------------------------|-------|-------------|
| Detailed Time Report                             |                         |       |             |
| City of Spokane/adv. Jay P. Mehring - #100625-17 |                         |       |             |
| Date   | Timekeeper              | Hours | Base Amount |
| 9/14/11  | Rowland, Milton G.      | 4.3   | 967.50      |
| 9/15/11  | Rowland, Milton G.      | 7.7   | 1,732.50    |
| 9/16/11  | Rowland, Milton G.      | 6.2   | 1,395.00    |
| 9/17/11  | Rowland, Milton G.      | 6.0   | 1,800.00    |
| 9/18/11  | Rowland, Milton G.      | 8.4   | 2,115.00    |
| 9/19/11  | Rowland, Milton G.      | 5.2   | 1,170.00    |
| 9/20/11  | Rowland, Milton G.      | 5.1   | 1,147.50    |
| 9/21/11  | Rowland, Milton G.      | 6.3   | 1,417.50    |
| 9/22/11  | Rowland, Milton G.      | 3.9   | 877.50      |
| 9/23/11  | Rowland, Milton G.      | 7.6   | 1,710.00    |
| 9/24/11  | Rowland, Milton G.      | 3.7   | 832.50      |
| 9/25/11  | Rowland, Milton G.      | 4.2   | 945.00      |
| 9/26/11  | Rowland, Milton G.      | 4.8   | 1,080.00    |
| 9/27/11  | McCoy, Katie Carder     | 5.8   | 1,827.00    |
| 9/27/11  | Rowland, Milton G.      | 5.9   | 1,327.50    |
| 9/28/11  | McCoy, Katie Carder     | 0.2   | 63.00       |
| 9/28/11  | Rowland, Milton G.      | 6.5   | 1,482.50    |
| 9/29/11  | Rowland, Milton G.      | 6.8   | 1,530.00    |
| 9/30/11  | Rowland, Milton G.      | 7.1   | 1,597.50    |
| 10/1/11  | Rowland, Milton G.      | 8.5   | 1,912.50    |
| 10/2/11  | Rowland, Milton G.      | 7.5   | 1,887.50    |
| 10/3/11  | Rowland, Milton G.      | 7.1   | 1,597.50    |
| 10/4/11  | McCoy, Katie Carder     | 2.4   | 576.00      |
| 10/4/11  | Rowland, Milton G.      | 6.2   | 1,845.00    |
| 10/5/11  | McCoy, Katie Carder     | 6.6   | 2,064.00    |
| 10/5/11  | Mikodragovich, Janelle  | 3.9   | 780.00      |
| 10/5/11  | Rowland, Milton G.      | 8.0   | 1,800.00    |
| 10/8/11  | McCoy, Katie Carder     | 0.3   | 72.00       |
| 10/8/11  | Patton, William H       | 0.7   | 276.50      |
| 10/8/11  | Rowland, Milton G.      | 4.0   | 900.00      |
| 10/7/11  | Rowland, Milton G.      | 8.0   | 1,800.00    |
| 10/8/11  | Rowland, Milton G.      | 7.5   | 1,887.50    |
| 10/9/11  | Rowland, Milton G.      | 7.7   | 1,732.50    |
| 10/10/11   | Fredman III, James J.   | 0.3   | 90.00       |
| 10/10/11   | McCoy, Katie Carder     | 0.4   | 96.00       |
| 10/10/11   | Nelson, Colm P          | 2.5   | 537.50      |
| 10/10/11   | Peltin, Steven R        | 0.8   | 240.00      |
| 10/10/11   | Rowland, Milton G.      | 10.1  | 2,272.50    |
| 10/11/11   | Gilliland, E. Alexandra | 1.5   | 262.50      |
| 10/11/11   | Gilliland, E. Alexandra | 0.6   | 87.50       |
| 10/11/11   | Gilliland, E. Alexandra | 2.5   | 437.50      |
| 10/11/11   | Gilliland, E. Alexandra | 1.1   | 192.50      |
| 10/11/11   | Gilliland, E. Alexandra | 1.0   | 175.00      |
| 10/11/11   | Gilliland, E. Alexandra | 0.7   | 122.50      |
| 10/11/11   | McCoy, Katie Carder     | 0.3   | 72.00       |
| 10/11/11   | Nelson, Colm P          | 10.0  | 2,150.00    |
| 10/11/11   | Rowland, Milton G.      | 8.5   | 1,912.50    |
| 10/12/11   | Gilliland, E. Alexandra | 2.1   | 367.50      |
| 10/12/11   | Gilliland, E. Alexandra | 1.0   | 175.00      |
| 10/12/11   | Gilliland, E. Alexandra | 1.0   | 175.00      |
| 10/12/11   | Lennox, Kelly A.        | 6.1   | 1,311.50    |

| Foster Pepper PLLC                               |                         |       |          |
|--|-------------------------|-------|----------|
| Detailed Time Report                             |                         |       |          |
| City of Spokane/adv. Jay P. Mehring - #100625-17 |                         |       |          |
| Date   | Timekeeper              | Hours | Base     |
|  |                         |       | Amount   |
| 10/12/11   | Nelson, Colm P          | 10.3  | 2,214.50 |
| 10/12/11   | Rowland, Milton G.      | 8.8   | 1,935.00 |
| 10/13/11   | Gilliland, E. Alexandra | 1.4   | 245.00   |
| 10/13/11   | Gilliland, E. Alexandra | 1.2   | 210.00   |
| 10/13/11   | Gilliland, E. Alexandra | 2.3   | 402.50   |
| 10/13/11   | Lennox, Kelly A.        | 1.9   | 408.50   |
| 10/13/11   | Nelson, Colm P          | 7.1   | 1,528.50 |
| 10/13/11   | Rowland, Milton G.      | 7.8   | 1,710.00 |
| 10/14/11   | Gilliland, E. Alexandra | 0.2   | 35.00    |
| 10/14/11   | Gilliland, E. Alexandra | 3.4   | 595.00   |
| 10/14/11   | Nelson, Colm P          | 5.0   | 1,075.00 |
| 10/14/11   | Rowland, Milton G.      | 3.3   | 742.50   |
| 10/15/11   | Nelson, Colm P          | 4.0   | 860.00   |
| 10/15/11   | Rowland, Milton G.      | 7.8   | 1,710.00 |
| 10/18/11   | Rowland, Milton G.      | 8.5   | 1,912.50 |
| 10/17/11   | DJulio, P. Stephen      | 0.4   | 120.00   |
| 10/17/11   | Gilliland, E. Alexandra | 2.9   | 507.50   |
| 10/17/11   | Gilliland, E. Alexandra | 0.8   | 105.00   |
| 10/17/11   | Nelson, Colm P          | 4.5   | 987.50   |
| 10/17/11   | Rowland, Milton G.      | 9.0   | 2,025.00 |
| 10/18/11   | Gilliland, E. Alexandra | 2.0   | 350.00   |
| 10/18/11   | McCoy, Katie Carder     | 2.2   | 528.00   |
| 10/18/11   | Nelson, Colm P          | 3.0   | 645.00   |
| 10/18/11   | Rowland, Milton G.      | 10.5  | 2,362.50 |
| 10/19/11   | McCoy, Katie Carder     | 2.9   | 696.00   |
| 10/19/11   | Rowland, Milton G.      | 10.1  | 2,272.50 |
| 10/20/11   | Rowland, Milton G.      | 9.5   | 2,137.50 |
| 10/21/11   | Rowland, Milton G.      | 6.3   | 1,417.50 |
| 10/22/11   | Rowland, Milton G.      | 4.4   | 990.00   |
| 10/23/11   | Rowland, Milton G.      | 4.3   | 987.50   |
| 10/24/11   | Gilliland, E. Alexandra | 0.4   | 70.00    |
| 10/24/11   | Gilliland, E. Alexandra | 4.8   | 840.00   |
| 10/24/11   | McCoy, Katie Carder     | 6.8   | 1,584.00 |
| 10/24/11   | Rowland, Milton G.      | 9.0   | 2,025.00 |
| 10/25/11   | Gilliland, E. Alexandra | 0.5   | 87.50    |
| 10/25/11   | Nelson, Colm P          | 0.3   | 64.50    |
| 10/25/11   | Rowland, Milton G.      | 9.1   | 2,047.50 |
| 10/26/11   | Gilliland, E. Alexandra | 3.5   | 612.50   |
| 10/26/11   | Gilliland, E. Alexandra | 0.2   | 35.00    |
| 10/26/11   | Nelson, Colm P          | 1.4   | 301.00   |
| 10/26/11   | Peltin, Steven R        | 0.3   | 80.00    |
| 10/26/11   | Rowland, Milton G.      | 9.2   | 2,070.00 |
| 10/27/11   | Gilliland, E. Alexandra | 0.5   | 87.50    |
| 10/27/11   | Gilliland, E. Alexandra | 3.3   | 577.50   |
| 10/27/11   | McCoy, Katie Carder     | 3.2   | 768.00   |
| 10/27/11   | Nelson, Colm P          | 4.4   | 846.00   |
| 10/27/11   | Peltin, Steven R        | 2.8   | 840.00   |
| 10/27/11   | Rowland, Milton G.      | 9.0   | 2,025.00 |
| 10/28/11   | Gilliland, E. Alexandra | 1.9   | 332.50   |
| 10/28/11   | McCoy, Katie Carder     | 1.2   | 288.00   |
| 10/28/11   | Nelson, Colm P          | 4.0   | 860.00   |

| Foster Pepper PLLC                               |                         |              |                   |
|--|-------------------------|--------------|-------------------|
| Detailed Time Report                             |                         |              |                   |
| City of Spokane/adv. Jay P. Mehring - #100825-17 |                         |              |                   |
| Date   | Timekeeper              | Hours        | Base Amount       |
| 10/28/11   | Peltin, Steven R        | 0.4          | 120.00            |
| 10/28/11   | Rowland, Milton G.      | 5.1          | 1,147.50          |
| 10/29/11   | Gilliland, E. Alexandra | 0.4          | 70.00             |
| 10/29/11   | Rowland, Milton G.      | 1.3          | 292.50            |
| 10/30/11   | McCoy, Katie Carder     | 0.2          | 48.00             |
| 10/30/11   | Rowland, Milton G.      | 3.1          | 697.50            |
| 10/31/11   | Gilliland, E. Alexandra | 0.6          | 105.00            |
| 10/31/11   | Gilliland, E. Alexandra | 3.3          | 577.50            |
| 10/31/11   | McCoy, Katie Carder     | 2.1          | 504.00            |
| 10/31/11   | Nelson, Colm P          | 0.3          | 64.50             |
| 10/31/11   | Rowland, Milton G.      | 9.8          | 2,205.00          |
| 11/1/11  | Gilliland, E. Alexandra | 1.5          | 282.50            |
| 11/1/11  | McCoy, Katie Carder     | 1.5          | 360.00            |
| 11/1/11  | Peltin, Steven R        | 2.0          | 600.00            |
| 11/1/11  | Rowland, Milton G.      | 9.8          | 2,160.00          |
| 11/2/11  | Rowland, Milton G.      | 9.5          | 2,137.50          |
| 11/3/11  | Rowland, Milton G.      | 6.3          | 1,417.50          |
| 11/4/11  | Rowland, Milton G.      | 1.6          | 360.00            |
| 11/6/11  | Rowland, Milton G.      | 1.2          | 270.00            |
| 11/7/11  | Rowland, Milton G.      | 0.4          | 90.00             |
| 11/8/11  | Rowland, Milton G.      | 1.1          | 247.50            |
| 11/8/11  | Rowland, Milton G.      | 1.1          | 247.50            |
| 11/10/11   | Rowland, Milton G.      | 1.0          | 225.00            |
| 11/11/11   | Gilliland, E. Alexandra | 1.5          | 282.50            |
| 11/12/11   | Rowland, Milton G.      | 4.0          | 900.00            |
| 11/13/11   | Rowland, Milton G.      | 6.1          | 1,372.50          |
| 11/14/11   | Gilliland, E. Alexandra | 0.1          | 17.50             |
| 11/14/11   | Nelson, Colm P          | 1.3          | 279.50            |
| 11/14/11   | Rowland, Milton G.      | 6.5          | 1,462.50          |
| 11/17/11   | Gilliland, E. Alexandra | 0.2          | 35.00             |
| 11/17/11   | Rowland, Milton G.      | 2.1          | 472.50            |
| 11/18/11   | Gilliland, E. Alexandra | 0.9          | 157.50            |
| 11/18/11   | Rowland, Milton G.      | 2.4          | 540.00            |
| 11/19/11   | Gilliland, E. Alexandra | 1.0          | 175.00            |
| 11/19/11   | Rowland, Milton G.      | 1.5          | 337.50            |
| 11/21/11   | Rowland, Milton G.      | 1.3          | 292.50            |
| 11/22/11   | Rowland, Milton G.      | 1.0          | 225.00            |
| 11/27/11   | Rowland, Milton G.      | 2.3          | 517.50            |
| 11/30/11   | Rowland, Milton G.      | 1.4          | 315.00            |
| 12/1/11  | Rowland, Milton G.      | 4.2          | 945.00            |
| 12/9/11  | McCoy, Katie Carder     | 0.5          | 120.00            |
| <b>Report Total</b>                              |                         | <b>563.8</b> | <b>125,266.50</b> |

# APPENDIX I

2012 WL 5361424

Only the Westlaw citation is currently available.

United States District Court,  
E.D. Washington.

Michael A. TAYLOR, Plaintiff,

v.

CITY OF CHENEY; Allan Gainer  
and Jane Doe Gainer, Defendants.

No. 11-CV-0170-TOR. | Oct. 31, 2012.

#### Attorneys and Law Firms

Michael David Kinkley, Scott M. Kinkley, Michael D. Kinkley PS, Spokane, WA, for Plaintiff.

Michael C. Bolasina, Summit Law Group, Seattle, WA, for Defendants.

#### Opinion

### ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

THOMAS O. RICE, District Judge.

\*1 BEFORE THE COURT is Defendants' Motion for Summary Judgment (ECF No. 25). This matter was heard with oral argument on October 11, 2012. Michael D. Kinkley and Scott M. Kinkley appeared on behalf of the Plaintiff. Michael C. Bolasina appeared on behalf of Defendants. The Court has reviewed the relevant pleadings and supporting materials, and is fully informed.

#### BACKGROUND

Plaintiff brings a § 1983 claim against Defendants for violating his Fourteenth Amendment right to procedural due process. Plaintiff also alleges violations of Washington's wage withholding statute (RCW 49.52) and Washington's Open Meetings Act (RCW 42.30). Presently before the Court is Defendants' Motion for Summary Judgment on all three of Plaintiff's claims.

#### FACTS

Plaintiff was an unpaid reserve police officer in the mid-1990s in Southern California. Defendant's Statement of Material Facts, ECF No. 28 ("Def.SOF") at ¶ 4. He graduated from reserve police academy in California, but did not attend a basic law enforcement academy. *Id.* In 1998, Plaintiff became an unpaid reserve police officer for the City of Medical Lake in Washington, and attended the Criminal Justice Training Commission's ("CJTC") Reserve Academy.<sup>1</sup> *Id.* at ¶ 5. He was then granted a "special" limited commission to serve as a fulltime police officer in Medical Lake when the city was short-handed after September 11, 2001. *Id.* at ¶ 6. Plaintiff was given the authority to serve as a police officer within city limits, however, he was not certified as a peace officer by the CJTC. *Id.* In 2002, Plaintiff graduated from the CJTC's Equivalency Academy,<sup>2</sup> and was then certified as a fulltime peace officer by the CJTC. *Id.* at ¶ 7. At this time, he signed a form certifying that he met the training requirements to become a peace officer. Sale Decl., ECF No. 32-1, Ex. C. The form also included a disclaimer that his certification could be revoked or denied if the certification was previously issued due to an administrative error by the CJTC. *Id.* Taylor testified that he understands now that he would only have qualified for the Equivalency Academy if he had attended CJTC's Basic Law Enforcement Academy ("Basic Academy") or the equivalent academy in another state. Bolasina Decl., ECF No. 29-1 at 65:15-66:9.

In 2003, Plaintiff was hired as an unpaid reserve police officer by the City of Cheney's ("Cheney") former chief of police Greg Lopes. Def. SOF at ¶ 11. In 2005, he was hired as a lateral fulltime police officer by new chief of police Jeff Sale ("Chief Sale") based on a mutual understanding that he was certified as a fulltime peace officer in Washington.<sup>3</sup> *Id.* at ¶ 12, 15. Plaintiff testified that he applied for a lateral position, and that he represented he was already certified as a peace officer in his application for that position. Bolasina Decl., ECF No. 29-1 at 89:9-22. Based on documentation issued to Plaintiff by the CJTC that he was certified as a fulltime peace officer, Chief Sale assumed that Plaintiff had graduated from the CJTC's Basic Academy or equivalent in another state. Def. SOF at ¶ 15. Cheney paid for Plaintiff to attend the Equivalency Academy and in October 2005<sup>4</sup> he began as a fulltime police officer in Cheney. *Id.* at ¶ 17.

\*2 In the spring of 2008, Captain Bill Bender of the Cheney Police Department reviewed Taylor's personnel file after conducting an investigation into alleged misconduct by Plaintiff during two traffic stops. *Id.* at ¶ 18. Captain Bender noticed that Plaintiff's file lacked documentation that he attended the Basic Academy in Washington or the equivalent in another state. *Id.* He contacted the CJTC for clarification, and the CJTC conducted its own investigation. *Id.* On June 30, 2008, Plaintiff was placed on administrative leave while his certification status was investigated. Sale Decl., ECF No. 32-2, Ex. G. Chief Sale met with Plaintiff and explained the discrepancy in his certification. Def. SOF at ¶ 18. Plaintiff was unable to provide documentation supporting his certification. *Id.* On July 10, 2008, the CJTC issued a letter to Chief Sale informing him that Plaintiff was incorrectly certified as a fulltime peace officer and should not have been sent to the Equivalency Academy because he never graduated from the Basic Academy, and this issue could only be corrected if Plaintiff successfully completed Basic Academy. Sale Decl., ECF No. 32-2, Ex. I.

In order to send Plaintiff to the Basic Academy, Cheney would have been required to pay the cost of attendance in addition to Plaintiff's salary, benefits, and living expenses for five months; as well as keeping his job open and unfilled during this time. Def. SOF at ¶ 22. Chief Sale and Arlene Fisher, Cheney's City Manager, decided they were unwilling to incur the expense to send Plaintiff to the Academy when he was hired with the understanding that he was already fully certified. *Id.* at ¶ 23, 35. On July 22, 2008, Cheney Mayor Allan Gainer sent Plaintiff written notice of a "pre-disciplinary/termination hearing" notifying Plaintiff that Cheney was considering termination based on his lack of certification as a fulltime peace officer, as well as possible suspension for unprofessional behavior on several traffic stops. Fisher Decl., ECF No. 30-2. He was informed that he had the right to attend the meeting with an attorney and he was given the opportunity to provide a written response at any time. *Id.* On July 31, 2008, Plaintiff attended the "pre-disciplinary/termination hearing" with his attorney; and Ms. Fisher and Mayor Gainer appeared on behalf of Cheney. Fisher Decl., ECF No. 30-3. During the hearing Plaintiff affirmed that he did not graduate from the Basic Academy in Washington. *Id.* After this hearing Mayor Gainer terminated Plaintiff's employment with the City of Cheney, effective August 4, 2008. *Id.*

Plaintiff was a member of the civil service, and was therefore entitled to a hearing to determine whether his termination was

for good cause. Wash. Rev.Code 41.12.090.<sup>5</sup> Under Cheney Civil Service Rule 5.03, a petition for hearing must:

be in writing, signed by the petitioner, giving the mailing address, the ruling from which the petition appeals, and in plain language and detail, the facts and reasons upon which the petition is based. A hearing on the merits may be denied if the petition fails to state specific facts and reasons or if, in the opinion of the Commission, the facts or reasons stated, if true, would not entitle the petitioner to any relief.

\*3 Showalter Decl., ECF No. 31-1. On August 14, 2008, Plaintiff's attorney sent a "demand for investigation" to Defendants requesting, among other things, an investigation of whether the termination of his employment was for good cause. Showalter Decl., ECF No. 31-2. According to Defendants, Plaintiff's letter did not request a hearing, or state any facts or reasons supporting the request, as required under the Cheney Civil Service Rules. ECF No. 26 at 8. On September 3, 2008, Diane Showalter, secretary for the Cheney Civil Service Commission ("Commission"), sent a response letter to Plaintiff and his attorney indicating that "the City [was] construing [Plaintiff's demand for investigation] as a petition for hearing" and asking him to supplement the demand for investigation with answers to very detailed questions within ten days of receiving the letter.<sup>6</sup> Showalter Decl., ECF No. 31-3. Plaintiff maintains that he did respond with a letter dated September 9, 2008,<sup>7</sup> indicating that the "facts and circumstances" of his demand for investigation "is the termination of his employment as detailed in the letter decision from the City of Cheney." Kinkley Decl., ECF No. 41-2.

On October 16, 2008, Showalter sent another letter to Plaintiff indicating that she did not receive a response to her previous letter and extending the deadline by an additional six days for Plaintiff to respond before taking the information to the Civil Service Commission "for a decision on how they want to proceed." Showalter Decl., ECF No. 31-4. According to Defendants, neither Plaintiff nor his attorney responded to either letter. ECF No. 26 at 9. On December 8, 2008, the Commission held a meeting in the mayor's conference room and the minutes indicated that "[w]e sent [Plaintiff] a letter notifying him of this meeting as he had requested a hearing. We did not receive a response from either [Plaintiff] or his attorney. The Commissioners discussed the issue and recommended that due to lack of response the Commission deem the issue closed."<sup>8</sup> Showalter Decl., ECF No. 31-5.

## SUMMARY JUDGMENT STANDARD

The court may grant summary judgment in favor of a moving party who demonstrates “that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). In ruling on a motion for summary judgment, the court must only consider admissible evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir.2002). The party moving for summary judgment bears the initial burden of showing the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The burden then shifts to the non-moving party to identify specific facts showing there is a genuine issue of material fact. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

\*4 For purposes of summary judgment, a fact is “material” if it might affect the outcome of the suit under the governing law. *Id.* at 248. Further, a material fact is “genuine” only where the evidence is such that a reasonable jury could find in favor of the non-moving party. *Id.* The court views the facts, and all rational inferences therefrom, in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 327, 378 (2007).

## DISCUSSION

### I. Section 1983 Claim

A cause of action pursuant to 42 U.S.C. § 1983 may be maintained “against any person acting under the color of law who deprives another ‘of any rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Southern Cal. Gas Co., v. City of Santa Ana*, 336 F.3d 885 (9th Cir.2003) (citing 42 U.S.C. § 1983). The rights guaranteed by § 1983 are “liberally and beneficently construed,” *Dennis v. Higgins*, 498 U.S. 439, 443, 111 S.Ct. 865, 112 L.Ed.2d 969 (1991). The Supreme Court has held that local governments are “persons” who may be subject to suits under § 1983. *Monell v. Department of Social Servs.*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). However, a municipality may only be held liable for constitutional violations resulting from actions undertaken pursuant to an “official municipal policy.” *Id.* at 691.

Thus, in order to prevail on a § 1983 claim against a municipal government, a plaintiff must prove the following elements by a preponderance of the evidence: (1) action by an employee or official under color of law; (2) deprivation of a right guaranteed by the U.S. Constitution or a federal statute; and (3) action pursuant to an “official municipal policy.” *Id.* at 690–692. In this case, Plaintiff has alleged violations of his rights to procedural due process under the Fourteenth Amendment.<sup>9</sup> For the purposes of this motion Defendants argue (1) Plaintiff was not deprived of a right guaranteed by the Fourteenth Amendment, and (2) Plaintiff has produced no evidence that his termination was pursuant to official municipal policy.

### A. Procedural Due Process

The Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law .” U.S. Const. amend. XIV, § 1. It is well-settled that a public employee with a constitutionally-protected interest in his or her continued employment is entitled to due process prior to being terminated. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). Generally, due process requires that an employee facing termination receive “oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story.” *Id.* at 546. As the Supreme Court emphasized in *Loudermill*, an employee’s opportunity to be heard must occur *before* the employee is terminated. *Id.* (emphasis added).

Furthermore, the Court stated that the Due Process Clause requires a hearing “at a meaningful time” which indicates that “[a]t some point, a delay in the post-termination hearing would become a constitutional violation.” *Id.* at 547 (internal citations omitted); see also *Gilbert v. Homar*, 520 U.S. 924, 935–36, 117 S.Ct. 1807, 138 L.Ed.2d 120 (1997) (remanding for consideration of whether employer violated due process by failing to provide a prompt post-suspension hearing). Moreover, the Court rejected the argument that it need not consider whether post-termination procedures were adequate because, in part, “the existence of post-termination procedures is relevant to the necessary scope of pretermination procedures.” *Loudermill*, 470 U.S. at 547 n. 12. The Court specifically held that due process required a pre-termination opportunity to respond “coupled with” post-termination administrative procedures under the applicable state statute. *Id.* at 547–48. Following this line of

reasoning, the Ninth Circuit has held that the court “*must* also independently assess the adequacy of the post-termination proceedings. For not only is such an assessment usually required to determine the necessary scope of pre-termination procedures, but the inadequacy of post-termination process may itself be a source of a distinct due process violation.” *Clements v. Airport Authority of Washoe County*, 69 F.3d 321, 332 (9th Cir.1995) (emphasis added).

\*5 The parties in this case do not dispute that the Plaintiff had a property interest in his continued employment or that his property interest was deprived when he was terminated. Plaintiff does not claim a violation of his pre-termination due process rights, and acknowledges that he was afforded a constitutionally adequate *Loudermill* hearing before he was terminated. ECF No. 43 at 4. Thus, the only question remaining for the Court is whether Plaintiff’s procedural due process rights were violated when he failed to receive a post-termination hearing before the Civil Service Commission.

As an initial matter the Court rejects Defendants’ argument that Plaintiff’s procedural due process claim should be summarily dismissed solely based on Defendants’ compliance with the *Loudermill* by providing an adequate pre-termination hearing. ECF No. 26 at 7. This is a blatant misstatement of the law under *Loudermill* where the Supreme Court recognized the importance of post-termination procedures when evaluating procedural due process afforded to an employee, and noted that defects in a post-termination hearing could be constitutional violations. *See Loudermill*, 470 U.S. at 547–48; *see also Bignall v. North Idaho College*, 538 F.2d 243, 246 (9th Cir.1976) (hearings regarding a termination decision should be granted “at a meaningful time and in a meaningful manner.”). Rather, as noted above, under Ninth Circuit case law the Court *must* independently evaluate the post-termination process for due process violations. *See Clements*, 69 F.3d at 332.

The Court also rejects Defendants’ argument that Plaintiff cannot claim a constitutional violation for failure to receive a post-termination hearing in front of the Commission because he failed to respond to several requests for additional information from the Commission’s Secretary. ECF No. 26 at 7–11. Plaintiff’s first letter demanded an investigation and was in fact construed as a request for a hearing. ECF No. 31–3; *see also* Wash. Rev.Code 41.12.090. It matters not whether Defendants received Plaintiff’s second letter dated September 9, 2008, because Plaintiff’s claim is that the denial of his demanded post-termination hearing violated his *federal*

due process rights. Furthermore, the Commission minutes erroneously reflect that Plaintiff was notified of that very hearing and he did not respond.

Defendants’ last argument is that any failure by Defendants to provide an appeal hearing is not a protected constitutional right because the Constitution does not guarantee that employers will follow their own internal rules regarding procedures for termination. *See Williams v. City of Seattle*, 607 F.Supp. 714, 720 (W.D.Wash.1985) (“[t]he process constitutionally due [Plaintiff] prior to deprivation of that property interest is determined not by the procedures set forth in the SPD Manual, but rather by the requirements of the Due Process Clause.”); *Harris v. Birmingham Bd. of Educ.*, 817 F.2d 1525, 1528 (11th Cir.1987) (“we emphasize that the violation of a state statute outlining procedures does not necessarily equate to a due process violation under the federal constitution.”). Thus, Defendants contend that even if they failed to follow their own rules, this does not equate to a “prima facie” violation of procedural due process. Rather, Defendants argue that in order to determine whether due process was violated, the Court must analyze the process received under federal law. *Id.*

\*6 Plaintiff responds that his constitutional due process rights should mirror those prescribed under Washington law, which include the right to a post-termination hearing in front of the Commission when timely requested by a civil service employee. Wash. Rev.Code 41.12.090 (a discharged civil service employee “may within ten days from the time of his or her [discharge] file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation.”). The Court rejects Plaintiff’s unsupported argument that the Court should unilaterally adopt the process afforded under the Washington state statute as defining the scope of process due to Plaintiff under *federal* law. Rather, the Court must analyze the process received under federal law to determine if Plaintiff had a federal due process right to a post-termination hearing.<sup>10</sup>

Defendants fail to follow their own reasoning in their motion for summary judgment. They do not cite the *Mathews v. Eldridge* balancing test, nor do they make any attempt to weigh the facts of this case under that standard. They make no attempt to establish an absence of material facts as to whether the lack of a post-deprivation hearing was a violation of Plaintiff’s federal due process rights. Instead, Defendants rely exclusively on the erroneous argument that no post-deprivation procedural due process was due Plaintiff as a

matter of federal law. The Court finds that Defendants failed to sustain their burden to show the lack of any genuine issues of material fact regarding whether the failure of the Commission to provide a post-termination hearing was a deprivation of Plaintiff's *federal* procedural due process rights.

### **B. Municipal Liability**

A municipal entity may only be held liable under 42 U.S.C. § 1983 for constitutional violations resulting from actions undertaken pursuant to an "official municipal policy." *Monell*, 436 U.S. at 691. The Ninth Circuit recognizes four categories of "official municipal policy" sufficient to establish municipal liability under *Monell*: (1) action pursuant to an express policy or longstanding practice or custom; (2) action by a final policymaker acting in his or her official policymaking capacity; (3) ratification of an employee's action by a final policymaker; and (4) a failure to adequately train employees with deliberate indifference to the consequences. *Christie v. Iopa*, 176 F.3d 1231, 1235–40 (9th Cir. 1999). A plaintiff must also establish a direct causal link between the municipal policy and the alleged constitutional deprivation. *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

Defendants argue Plaintiff's § 1983 claim fails because he is unable to prove that his termination was the result of any identifiable policy or custom of the Defendant. ECF No. 26 at 15. All of Defendants' arguments focus solely on the termination itself as an isolated and unique situation that Defendants have never encountered before; namely, discovering several years after hiring an employee that the employee lacked the minimum qualifications for the job. See *Trevino*, 99 F.3d at 918 (a policy or custom should not be based on "isolated or sporadic incidents; it must be founded on practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy.").

\*7 As an initial matter, Plaintiff does not dispute that the pre-termination hearing he was afforded complied with the due process requirements of *Loudermill*. Therefore, all of Defendants' arguments regarding the policy and practices of the Defendants' decision to terminate the Plaintiff's employment are essentially moot. The only issue remaining is whether the actions by the Civil Service Commission and its Secretary Ms. Showalter, were taken pursuant to a longstanding policy or custom of the Defendants. Defendants' sole mention of this discrete issue is one conclusory statement

made in their reply brief that Plaintiff "failed to establish any unconstitutional policy or practice in his not receiving a Commission hearing." ECF No. 45 at 8–9. Defendants offer no legal or factual analysis in support of this bare assertion. Moreover, Defendants fail to challenge alternate categories under which Plaintiff could establish municipal liability, including: action by a final policymaker acting in his or her official policymaking capacity, and ratification of an employee's action by a final policymaker. See *Christie*, 176 F.3d at 1235–40. The Court is not satisfied with Plaintiff's lack of responsive briefing on this point. Yet, the Court finds that Defendants have failed to meet their burden to establish a complete absence of genuine issues of material fact as to whether the events surrounding the denial of the post-termination Commission hearing were pursuant to official policy and custom of Defendants.

Last, Defendant Allan Gainer argues that he cannot be liable because Plaintiff has failed to establish that he had anything to do with the operations or decision of the Commission. The only evidence offered by Plaintiff is a mention by counsel during oral argument that the letter sent by Ms. Showalter to Plaintiff asking for more information so the Commission could "investigate the matter and otherwise decide how to proceed," was on City of Cheney letterhead indicating it was from the "Office of the Mayor Allan Gainer." Showalter Decl., ECF No. 31–3. That said, while the record before the Court indicates that Mayor Gainer was heavily involved in the decision to terminate Plaintiff's employment, the Court finds absolutely no evidence that Mayor Gainer had any personal involvement in the post-termination hearing process. Therefore, Allan Gainer and Jane Doe Gainer are dismissed from this action.

For the foregoing reasons, the Court finds that the City of Cheney failed to establish the absence of genuine issues of material fact as to whether the failure to provide a post-termination hearing was a violation of Plaintiff's Fourteenth Amendment procedural due process rights. Summary judgment on Plaintiff's § 1983 claim is denied.

### **II. Unpaid Wages Claim (RCW 49.52)**

Under RCW 49.52.050(2) an employer is guilty of a misdemeanor if it "wilfully and with intent to deprive the employee of any part of his or her wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by statute, ordinance, or contract." Wash. Rev. Code § 49.52.050(2). This statute is to be construed liberally to advance the intent of the Legislature

to protect employee wages and assure payment. *Schilling v. Radio Holdings, Inc.*, 136 Wash.2d 152, 159, 961 P.2d 371 (1998). The critical determination in these cases is whether non-payment is "wilful," in other words, when it is the "result of knowing and intentional action by the employer, rather than a bona fide dispute as to the obligation of payment." *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1050 (9th Cir.1995); see also *Schilling*, 136 Wash.2d at 161, 961 P.2d 371 (to qualify as "bona fide" dispute it must be "fairly debatable" as to whether an employment relationship exists or whether the wages must be paid). Washington courts have found that an employer does not willfully withhold wages under the meaning of this statute where he has a "bona fide belief that he is not obligated to pay them." See e.g., *McAnulty v. Snohomish School Dist. No. 201*, 9 Wash.App. 834, 838, 515 P.2d 523 (Ct.App.1973) (finding no evidence in the record that employer did not genuinely believe that employee was legitimately discharged and that wages could be properly discontinued).

\*8 Defendants argue that Plaintiff was timely paid all salary and benefits owed to him through his termination date, and the statute is not intended to cover future wages that would have been earned if he had not been terminated. See *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1202-1204 (9th Cir.2002) (rejecting plaintiffs' claim for prospective wages pending a jury verdict and noting that RCW 49.52.050 has been applied when an employer withholds a "quantifiable and undisputed amount of accrued pay," but not when "there is a bona fide dispute as to whether the employer is obligated to pay the amounts in question."). Plaintiff does not respond to Defendants' challenge.

Generally, the issue of whether the withholding of wages was "wilful" is a question of fact, however, if reasonable minds could reach but one conclusion from those facts, the issue may be decided as a matter of law. *Moore v. Blue Frog Mobile, Inc.*, 153 Wash.App. 1, 8, 221 P.3d 913 (Ct.App.2009). Plaintiff identifies no specific facts showing a genuine issue of material fact exists as to whether Defendants knowingly and intentionally withheld wages. On the contrary, the record before the Court indicates that Defendants had a genuine belief that they were not obligated to pay Plaintiff after his employment was terminated. See *McAnulty*, 9 Wash.App. at 838, 515 P.2d 523. Even when viewed in the light most favorable to Plaintiff, the Court finds that a reasonable jury could only reach the conclusion that there was no violation of RCW 49.52.050(2). Summary judgment on this claim is granted.

### III. Open Meetings Act Claim (RCW 42.30)

Under the Washington's Open Meetings Act ("OPMA") "[a]ll meetings of a governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency...." Wash. Rev.Code § 42.30.030. The purpose of the OPMA is to ensure open decision-making by public bodies, and courts apply its provisions liberally in order to further this purpose. *Clark v. City of Lakewood*, 259 F.3d 996, 1012-13 (9th Cir.2001). In order to avoid summary judgment on an OPMA claim, "plaintiff must produce evidence showing (1) members of a governing body (2) held a meeting of that body (3) whether that body took action in violation of OPMA, and (4) the members of that body had knowledge that the meeting violated the statute." *Eugster v. City of Spokane*, 118 Wash.App. 383, 424, 76 P.3d 741 (Ct.App.2003).

Plaintiff alleges that Defendants violated the OPMA because the Commission meeting during which Plaintiff's termination was discussed was not held open to the public. See Wash. Rev.Code 42.30 *et seq.* Defendants contend that this allegation is false because the Commission meeting on December 8, 2008 was open to the public, and the time and place of the meeting was posted in compliance with state law and Commission policy. Def. SOF at ¶ 52. Minutes from the Commission meeting on this date show that Plaintiff's termination was briefly discussed, and "due to the lack of response" from the Plaintiff after requests for supplemental information "the Commission deem[ed] the issue closed." Showalter Decl., ECF No. 31-5.

\*9 Once again, Plaintiff produces no evidence to show a genuine issue of material fact as to whether the meeting on December 8, 2008 was open to the public. Defendants' counsel admitted at oral argument that Plaintiff was not notified that this meeting was taking place. However, the OPMA only addresses the general requirement to hold a meeting open to the public, it does not impose the additional burden to ensure that interested parties are individually notified. Even in the light most favorable to the Plaintiff, the Court finds absolutely no evidence in the record that the meeting on December 8, 2008, was not open to the public, or that Plaintiff was not permitted to attend the meeting. Summary judgment on this claim is granted.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. Defendants' Motion for Summary Judgment, ECF No. 25, is **GRANTED** as to the claim for Willful Withholding of Wages (section VI of the Complaint) and the claim for violation of Washington's OPMA (section VII of the Complaint); and **DENIED** as to the claim for violation of Civil Rights, 42 U.S.C. § 1983 (section V of the Complaint).

2. Defendants Allan Gainer and Jane Doe Gainer are **DISMISSED** from this action. The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

Footnotes

- 1 The CJTC is the executive agency responsible for training and certifying peace officers in Washington State. Def. SOF ¶ 1.
- 2 The purpose of the Equivalency Academy is to educate out of state officers with Washington's laws. Def. SOF ¶ 2.
- 3 Despite Plaintiff's testimony that he did apply for a lateral position, he heavily disputes that he was hired as a lateral police officer. Plaintiff contends that due to an administrative error by the CJTC he was listed as a lateral hire instead of "properly" as a police trainee which he argues is the position he applied for. Plaintiff's Response to Defendant's Statement of Facts, ECF No. 42 ("PI.Response") at ¶ 12, 17.
- 4 Taylor had previously graduated from the Equivalency Academy in Medical Lake but he was required to attend again because more than 24 months had lapsed since he previously served as a fulltime police officer. Def. SOF at ¶ 17.
- 5 Plaintiff contends "the lynch pin of this case is whether, at the time [he] was hired, was pre-certification a requirement of the job description." ECF No. 43 at 2. Thus, Plaintiff argues that the sole question is whether his discharge was in "good faith for cause ." ECF No. 43 at 10. That may be an issue considered by the Civil Service Commission, but it has no bearing on this cause of action under § 1983 which only examines whether Plaintiff was afforded procedural due process.
- 6 The letter also indicates that the decision to hold an actual hearing is in the discretion of the Civil Service Commission.
- 7 In their reply brief, Defendants contend they have never seen this letter before now. ECF No. 45 at 2. It was not part of Plaintiff's initial disclosures, nor was it produced in response to a request for production asking for all correspondence sent to or received from the Commission. Defendants ask that it be excluded from consideration on the basis that it was improperly withheld during discovery. ECF No. 45 at 11. As indicated in the discussion below, whether Plaintiff adequately responded to the additional request for information is immaterial to an analysis of whether the process afforded to Plaintiff was constitutionally adequate.
- 8 The Court finds no evidence in the record that Plaintiff was ever "notified of the meeting" on December 8, 2008. Defendants' counsel conceded at oral argument that this was an erroneous statement in the minutes; no letter was actually sent to Plaintiff notifying him of the December 8th hearing.
- 9 At oral argument Plaintiff clarified that he did not intend to pursue a substantive due process claim.
- 10 Generally, the amount of process due in a particular situation depends upon a balancing of the competing interests at stake. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Specifically, a court must balance, "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest." *Id.*