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Court of Appeals, Division III No. 396592

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

CHARLES HAUSE, an individual,

Petitioner,

v.

SPOKANE COUNTY, a Washington Municipal Corporation,

Respondent.

**RESPONDENT'S ANSWER TO
PETITION FOR REVIEW**

JOHN R. NICHOLSON, WSBA #30499
Jackson & Nicholson, PLLC
900 SW 16th Street, Suite 215
Renton, WA 98057
(206) 582-6001
Attorney for Respondent Spokane
County

Table of Contents

I.	INTRODUCTION.....	1
II.	COUNTER-STATEMENT OF THE CASE.....	2
III.	ISSUES PRESENTED FOR REVIEW	10
IV.	ARGUMENT	11
	A. Mr. Hause’s Petition for Review Should Be Denied.....	11
	1. Mr. Hause Does Not Satisfy the Criteria for Review Under RAP 13.4(b)	11
	2. Although Dicta, the Court of Appeals’ Discussion of WISHA Was Correct.....	15
	B. If This Court Accepts Review of the Issue Identified By Mr. Hause, It Should Also Accept Review of Other Issues Raised By the County that Would Result in Affirming the Trial Court on Alternative Grounds.....	20
	1. Mr. Hause’s Conduct Did Not Further Any Public Policy Reflected by WISHA.....	21
	2. Mr. Hause Did Not Have a Reasonable Belief that the County Violated the Law, and His Conduct Was Not Reasonable	23
	3. Mr. Hause Was Motivated By Private or Proprietary Interests Rather Than the Public Good	25

4. The County Provided a Legitimate Non- Pretextual Reason or Overriding Justification for Mr. Hause’s Termination.....	27
V. CONCLUSION	30
VI. CERTIFICATION.....	30

Cases

<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)	28
<i>Carranza v. Dovex Fruit Co.</i> , 190 Wn.2d 612, 624-25, 416 P.3d 1205 (2018)	18
<i>Ellis v. City of Seattle</i> , 142 Wn.2d 450, 460, 13 P.3d 1065 (2000)	19, 24, 25
<i>Gardner v. Loomis Armored, Inc.</i> , 128 Wn.2d 931, 936, 913 P.2d 377 (1966)	21, 22
<i>In re Detention of Williams</i> , 147 Wn.2d 476, 491, 55 P.3d 597 (2002)	20
<i>McDaniels v. Group Health Co-op</i> , 57 Supp.3d 1300, 1312 (W.D. Wash. Oct. 29, 2014)	28
<i>Ng-A-Qui v. Fluke Corp.</i> , 25 Wn.App.2d 1017, 2023 WL 195250 (Wash. App. Jan. 17, 2023)	19
<i>O’Hartigan v. Dept. of Personnel</i> , 118 Wn.2d 111, 124, 821 P.2d 44 (1991)	28
<i>Protect the Peninsula’s Future v. City of Port Angeles</i> , 175 Wn. App. 201, 215, 304 P.3d 914 (2013)	15
<i>Ruse v. Dept. of Labor & Industries</i> , 138 Wn.2d 1, 8-9, 977 P.2d 570 (1999)	15
<i>Samson v. City of Bainbridge Island</i> , 149 Wn. App. 33, 43, 202 P.3d 334 (2009)	18

<i>State v. Lazcano</i> , 188 Wn. App. 338, 354 P.3d 233 (2015).....	12
<i>State v. Russell</i> , 171 Wn.2d 118, 122, 249 P.3d 604 (2011).....	12
<i>Thompson v. St. Regis Paper Co.</i> , 102 Wn.2d 219, 232, 685 P.2d 1081 (1984).....	12
<i>Washburn v. City of Federal Way</i> , 178 Wn.2d 732, 753 fn. 9, 310 P.3d 1275 (2013).....	11
<i>Williams v. Dept. of Social and Health Services</i> , 24 Wn.App.2d 683, 700, 524 P.3d 658 (2022)	28

Statutes

RCW 49.19.010 (4)	19
-------------------------	----

Rules

RAP 13.1(a).....	14
RAP 13.4(a).....	11
RAP 13.4(b)(4).....	1, 14

I. INTRODUCTION

Respondent, Spokane County (“the County”), submits this answer to the petition for review filed by Petitioner Charles Hause. Mr. Hause’s petition rests on his challenge to the Court of Appeals’ determination that he did not adequately argue the Washington Industrial Safety and Health Act (“WISHA”), RCW 49.17, *et. seq.*, as a basis for his wrongful termination in violation of public policy claim to preserve for appeal the question he asks this Court to review. This discretionary decision by the Court of Appeals about its view of the trial court record does not present “an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b)(4). Nor does the Court of Appeals’ limited discussion of WISHA in dicta from its unpublished opinion meet this test. The Court’s remarks about WISHA are consistent with the law and non-binding guidance published by the Department of Labor and Industries (“the Department”) Mr. Hause has cited.

If the Court accepts review of the issue Mr. Hause raises, it should also review related dispositive issues argued but not decided below. Even if the Court agrees with Mr. Hause that public policies reflected by WISHA include remediating workplace violence, he did not establish a *prima face* case of wrongful termination under the facts of this case. If the Court concludes a *prima facie* case of the tort was shown, the County established legitimate reasons for Mr. Hause's termination unrelated to any public policy-linked conduct. The Court should hold Mr. Hause did not establish the County's reasons were pretextual. Alternatively, it should hold the County had an overriding justification for the termination.

II. COUNTER-STATEMENT OF THE CASE

As the Court of Appeals' opinion succinctly states, "The Spokane County Sheriff fired Hause after Hause filed a workplace violence complaint and the sheriff concluded that Hause misrepresented facts during the investigation of his complaint." *Petition*, App. A, Opinion at 1. Mr. Hause, a

forensic technician in the County Sheriff's Office, had a years-long history of making complaints about coworker Traci Boniecki, the subject of the workplace violence complaint, but those complaints had been about her work performance (even though he was not her supervisor) and her personality. CP 110, 117, 120. Mr. Hause had never previously claimed Ms. Boniecki was violent. CP 110.

Mr. Hause was close friends with Lori Preuninger, another former coworker who had her own series of personal conflicts with Ms. Boniecki. *Id.* Most significantly, Ms. Preuninger accused Ms. Boniecki of "keying" her vehicle while it was parked in a County parking lot. CP 171. After the County placed Ms. Boniecki on administrative leave, the Spokane Police Department determined there was insufficient evidence to prosecute her, and the County determined in a follow-up internal affairs investigation that it likewise could not substantiate the allegations. CP 171-72. Mr. Hause submitted his workplace violence complaint about Ms. Boniecki shortly

after learning she would not face criminal prosecution or discipline for the “keying” allegations and just days after being admonished by a superior that anyone who retaliated against her would be subject to discipline. CP 151-52, 172, 183-84.

Mr. Hause’s workplace violence complaint accused Ms. Boniecki of having an outburst in which she threw an empty plastic spray bottle that hit an overhead cabinet. CP 183-84. Mr. Hause made the complaint on September 18, 2020, but the incident occurred in February 2020, over six months earlier. CP 172, 183-84. Both County and Sheriff’s Office policies had required that Mr. Hause report any workplace violence concerns immediately. CP 174-75, 244. Mr. Hause reported the incident to the County risk management office, but he deliberately did not report it to his direct supervisors or anyone in his chain of command. CP 112-13. Both County and Sheriff’s Office policy required such incidents be reported to a supervisor. CP 174-75, 244. In the complaint, Mr. Hause

expressed his desire that Ms. Boniecki receive “appropriate discipline.” CP 184.

Adding to the suspicious nature of the complaint, Mr. Hause did not actually observe the events he described in it, although the complaint suggested he had. CP 115. Another coworker Mr. Hause identified as Ms. Boniecki’s “victim” had not even been in the room when the empty plastic bottle was thrown, and no one present for the incident had complained or felt victimized. CP 164-65. Ms. Boniecki self-reported and apologized for her unprofessional behavior during the incident many months earlier, and she was verbally counseled by her supervisor. *Id.*

The County’s investigators interviewed Mr. Hause twice during its internal investigation into his conduct. CP 176. They determined he made false or misleading statements and was evasive. CP 204-08. Some of the false or misleading statements related to what communications he had with coworkers about Ms. Boniecki while she was under investigation. CP 204-05.

Mr. Hause had engaged in many disparaging text messages with coworker John Schlosser about Ms. Boniecki related to her being under investigation and on administrative leave. CP 133-43. In his first interview, Mr. Hause stated he had only spoken to Mr. Schlosser once on the phone about Ms. Boniecki, even though he still had the texts with Mr. Schlosser in his possession. CP 205. The investigators later learned of the texts from Mr. Schlosser, who clearly remembered them although he, unlike Mr. Hause, had not retained them. CP 206. When confronted with this fact during his second interview, Mr. Hause admitted the texts existed and even reviewed them during the interview itself, but he still declined to allow the investigators to see them and continued to be deceptive. CP 206.

The text messages finally had to be produced in discovery. In them, Mr. Hause referred to Ms. Boniecki as a “sociopath,” insulted her work ethic, and expressed disdain for anyone at work whom he believed was aligned with her, going

so far as to call the Undersheriff a “spineless coward.” CP 139-40. Most disturbingly, after conceding he had been “dying to tell” Mr. Schlosser about the internal investigation into Ms. Boniecki, Mr. Hause texted the following statement, providing a glimpse into his plans to continue harassing her and those he perceived as supporting her after he returned to work from a period of leave:

[W]hen I get back, I’m coming hard after them. I made their life pretty miserable for my last 2 weeks there, and it’s only going to get worse for them on my return.

CP 138.

In addition to less serious policy violations, the Sheriff concluded Mr. Hause had made false or misleading statements in his complaint and during the investigation, resulting in his termination after a *Loudermill* hearing. CP 178-78, 210-17. Mr. Hause subsequently brought this lawsuit. CP 75-82.

Mr. Hause’s Amended Complaint asserted four claims:

(1) retaliation under the Washington Law Against

Discrimination (“WLAD”), RCW 49.60; (2) whistleblower retaliation; (3) retaliation for engaging in union practices under RCW 51.56; and (4) wrongful termination in violation of public policy. CP 80. While the Complaint referenced several different statutes as bases for liability, it made no mention of WISHA nor any of its regulations. CP 75-82.

The County moved for summary judgment, arguing Mr. Hause could not establish any *prima facie* claim, and that even if he could, Mr. Hause’s false or misleading statements were a legitimate non-retaliatory reason for his termination. CP 260-80. In Mr. Hause’s summary judgment opposition, he claimed numerous statutes and internal County policies supported his claim, but he never once cited WISHA or any of its regulations. CP 283-305, 606-12. On February 9, 2023, the trial court granted the County’s summary judgment motion in part, dismissing the first three claims but denying the motion as to Mr. Hause’s wrongful termination claim. CP 657-59. The Court stated it denied summary judgment on this claim based on the

County's internal workplace violence and whistleblowing policies. CP 656.

The County filed a timely motion for reconsideration. CP 664-78. On April 5, 2023, the trial court granted the County's motion for reconsideration and dismissed Mr. Hause's remaining wrongful termination claim. 793-95. The Court explained that the County's internal policies, which were the basis of its earlier decision, did not give rise to a clear mandate of public policy and Mr. Hause had not shown he engaged in conduct furthering any such policy. CP 790-92.

On July 25, 2024, after Mr. Hause appealed the dismissal of his case, Division III issued an unpublished opinion affirming summary judgment in favor of the County. Mr. Hause filed his petition for review with an effective filing date of August 27, 2024, rendering it untimely by one day. Pending along with this petition for review is Mr. Hause's motion for an extension of time to excuse the untimely filing.

III. ISSUES PRESENTED FOR REVIEW

The County chiefly requests that the Court deny Mr. Hause's petition for review, both because it is untimely and because it does not satisfy RAP 13.4(b). However, should the Court accept review of the single issue raised by Mr. Hause, it should also review the following related issues, which were raised by the County but not decided by the Court of Appeals insofar as it affirmed summary judgment without reaching them:

1. Whether summary judgment on Mr. Hause's wrongful discharge claim should be affirmed because he did not show the discharge may have been motivated by reasons that contravene any clear mandate of public policy nor that he engaged in any public-policy-linked conduct that was a significant factor in the decision to discharge him?

2. Alternatively, whether summary judgment on Mr. Hause's wrongful discharge claim should be affirmed, because he did not establish the jeopardy or causation elements under the Perrit test formulation of the tort?

3. Alternatively, whether summary judgment on Mr. Hause's wrongful discharge claim should be affirmed, because the County had a legitimate non-pretextual reason and/or overriding justification for the discharge?

See RAP 13.4(a). These issues should be included in any further appellate review, because they are alternative grounds for upholding summary judgment. *See Washburn v. City of Federal Way*, 178 Wn.2d 732, 753 fn. 9, 310 P.3d 1275 (2013).

IV. ARGUMENT

A. Mr. Hause's Petition for Review Should Be Denied

As a preliminary matter, Mr. Hause's petition is untimely.¹ Setting aside its untimeliness, the petition focuses on whether the public policy of WISHA includes remediating workplace violence, which is an issue the Court of Appeals determined he did not preserve for review. Neither the question of whether Mr. Hause preserved the issue for review nor the Court of Appeals' limited discussion of WISHA in dicta satisfies the criteria of RAP 13.4(b).

1. Mr. Hause Does Not Satisfy the Criteria for Review Under RAP 13.4(b)

¹ If the Court denies Mr. Hause's pending motion for an extension of time, the petition should be denied as untimely without reaching any of his arguments.

In a footnote, Mr. Hause concedes the Court of Appeals held he failed to preserve his WISHA-related arguments by not sufficiently raising them in the trial court. *Petition* at 4, fn. 5. Mr. Hause then goes on in the footnote to “assign error” to this conclusion, disputing the Court of Appeals’ view of the trial court record. *Petition* at 5, fn.5.

Whether a claimed error was sufficiently preserved below to appropriately raise on appeal is a matter within the appellate court’s discretion. *See State v. Russell*, 171 Wn.2d 118, 122, 249 P.3d 604 (2011); *State v. Lazcano*, 188 Wn. App. 338, 354 P.3d 233 (2015) (“We may decline to consider an issue that was inadequately argued below.”); RAP 2.5(a). Importantly, to assert a wrongful discharge claim, it is an employee’s burden to “plead and prove that a stated public policy, either legislatively or judicially recognized, may have been contravened.” *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232, 685 P.2d 1081 (1984) (emphasis added). “Pleadings” consist of the parties’ complaints and answers,

which set forth their legal contentions. CR 7(a). Mr. Hause's Amended Complaint contained no reference to WISHA or its regulations whatsoever. Rather, the only statutes it mentioned as supporting his claims were RCW 49.60, RCW 42.20, and RCW 41.56. CP 75-82; *See* App. A. Mr. Hause has now abandoned those statutes and contends the Court should instead allow him to proceed on a theory never pleaded.

Mr. Hause also did not cite WISHA in his response to the County's summary judgment motion. CP 283-305; *See* App. B. Mr. Hause's claim that he spent "100 pages-worth of briefing" on his WISHA theory in response to the County's motion for reconsideration is disingenuous. *Petition* at 6. In his fifteen-page opposition to the County's motion for reconsideration, he still clung to his unsuccessful theories that whistleblower statutes (RCW 42.40 and RCW 42.41) and the County's internal policies created a mandate of public policy. CP 682-97; *See* App. C. Mr. House did cite, for the first time, some provisions of WISHA and its regulations, claiming they

“establish[ed] yet another basis” for his claims, although he had not pleaded the statute nor ever previously raised it in the litigation. CP 693. Given all of this, the Court of Appeals’ determination that Mr. Hause did not sufficiently argue WISHA to preserve the issue for review was proper.

Equally important, Mr. Hause’s putative “assignment of error” to the Court of Appeals’ determination that he did not preserve an issue for appeal does not satisfy the criteria for review he has invoked. *See* RAP 13.4(b)(4). This Court is not an “error-correcting” court and certainly is not here to resolve disputes about the trial court record. *See generally* RAP 13.1(a), 13.4(b). Consequently, even without reaching the merits, Mr. Hause’s petition should be denied.

This is not a case that “involves an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b)(4). To begin with, the Court of Appeals’ decision is unpublished and therefore has “no precedential value” and is “not binding on any court.” GR 14.1. Mr. Hause’s

hyperbole that the sky is falling due to the Court of Appeals' brief discussion of WISHA is unfounded.

This is especially so, given the Court of Appeals decided Mr. Hause did not preserve the issue. Since it found the error was not preserved, its discussion of whether public policy reflected in WISHA includes remediating workplace violence is dicta that was unnecessary to its decision. *See, e.g., Ruse v. Dept. of Labor & Industries*, 138 Wn.2d 1, 8-9, 977 P.2d 570 (1999) (affirming Court of Appeals where challenged language was dicta). "Dicta is not binding authority." *Protect the Peninsula's Future v. City of Port Angeles*, 175 Wn. App. 201, 215, 304 P.3d 914 (2013).

2. Although Dicta, the Court of Appeals' Discussion of WISHA Was Correct

Even if this Court overlooks that the Court of Appeals' discussion of WISHA was dicta, its analysis was correct. Mr. Hause inaccurately claims the decision below conflicts with an "administrative precedent" of the Department that WISHA

requires remediation of workplace violence in the context of this case. But the only materials Mr. Hause has offered showing the Department interprets workplace violence to be within the ambit of WISHA are an internal staff directive, which was never brought to the attention of the trial court or the Court of Appeals,² and an informational pamphlet, which the agency describes as a “guidebook.”³ The directive merely provides “guidance to Department staff on the appropriate application of WISHA standards in workplaces where there is an increased risk of violent incidents” and reflects the agency merely allowed for the possibility that certain WISHA regulations “may apply to the hazards of violence in the workplace” *Petition*, App. B. at 2 (emphasis added). It also clarifies, “Voluntary workplace violence guidelines issued by L&I may not be used as a basis for citation, nor may such guidelines be used to demonstrate an employer’s knowledge of a hazard for enforcement purposes.” *Id.* at 6.

² *Petition*, App. B.

³ *Petition*, App. C.

The guidebook expressly recognizes Washington law only requires “workplace violence prevention programs in health care settings, psychiatric hospitals and late-night retail establishments, like convenience stores.” *Petition*, App. C. at 1. Appendix E to the guidebook cites laws and regulations governing workplace violence programs in these settings, which do not apply here. *Id.* at Appendix E:8. Like the staff directive, it lists “other L&I regulations that may apply to workplace violence hazards,” carefully not making any determination about whether they actually do. *Id.* at E:9 (emphasis added). The guidelines nonetheless encourage all employers to take steps to eliminate workplace violence and offer a sample prevention program that can be adopted by any employer on a voluntary basis. *Id.*

The court gives some deference to an administrative agency’s interpretation of its own regulations in a judicial review proceeding, unless “there is a compelling indication that the agency’s regulatory interpretation conflicts with the

legislature's intent or exceeds the agency's authority.” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 43, 202 P.3d 334 (2009). But the staff directive and guidebook are not regulations, and they therefore do not have the force of law. *Carranza v. Dovex Fruit Co.*, 190 Wn.2d 612, 624-25, 416 P.3d 1205 (2018).

Besides, the Court of Appeals' opinion does not conflict with either the Department's staff directive or its guidebook. At most, the Department has raised the specter in these documents that certain WISHA regulations “may apply” to workplace violence hazards, without taking any definitive position. The agency's recognition that Washington law only expressly addresses workplace violence in other unrelated settings is correct. Neither WISHA nor any of the regulations cited by Mr. Hause mention workplace violence, and none of the wrongful

discharge cases that rely on public policies demonstrated by WISHA have involved workplace violence.⁴

While the legislature has enacted a law specifically addressing and defining workplace violence, RCW 49.19, *et. seq.*, that law is limited to health care settings.⁵ As noted in the Department’s guidebook, there are other laws which also mandate specific actions by late night retail businesses and facilities for the mentally ill that have the purpose of preventing violence to employees, but these laws likewise have no application to the County. *Petition*, App. C at Appendix E (citing RCW 72.23.400 and WAC 296-832).

“Under *expressio unius est exclusion alterius*, a canon of statutory construction, to express one thing in a statute implies

⁴ See, e.g., *Ellis*, 142 Wn.2d at 453-57 (involving problems with Key Arena fire alarm system); *Ng-A-Qui v. Fluke Corp.*, 25 Wn.App.2d 1017, 2023 WL 195250, *1 (Wash. App. Jan. 17, 2023) (involving health and safety specialist reporting workplace safety hazards); *Wilson v. City of Monroe*, 88 Wn. App. 113, 116, 943 P.2d 1134 (1997) (involving complaints about employer’s illegal discharge into Skykomish River).

⁵ “Workplace violence,” “violence,” or “violent act” means any physical assault or verbal threat of physical assault against an employee of a health care setting on the property of the health care setting. “Workplace violence,” “violence,” or “violent act” includes any physical assault or verbal threat of physical assault involving the use of a weapon, including a firearm as defined in RCW 9.41.010, or a common object used as a weapon, regardless of whether the use of a weapon resulted in an injury.” RCW 49.19.010(4).

the exclusion of the other.” *In re Detention of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002). “It is well settled where the legislature uses certain language in one instance but different, dissimilar language in another, a difference in legislative intent is presumed.” *Woodbury v. City of Seattle*, 172 Wn. App. 747, 753, 292 P.3d 134 (2013). Had the legislature intended to regulate workplace violence in all employment settings, it would not have limited the reach of RCW 49.19. Further, even if RCW 49.19 were held to establish a clear mandate of public policy in the context of non-health care settings, Ms. Boniecki’s act of throwing an empty plastic spray bottle at a cabinet would not constitute “workplace violence” as the legislature has defined it. She did not physically assault anyone or threaten assault.

B. If This Court Accepts Review of the Issue Identified By Mr. Hause, It Should Also Accept Review of Other Issues Raised By the County that Would Result in Affirming the Trial Court on Alternative Grounds

In both the trial court and Court of Appeals, the County argued multiple grounds in support of its motion for summary judgment. Should the Court accept review and agree with Mr. Hause's arguments about the scope of the public policy under WISHA, it should nevertheless affirm summary judgment in favor of the County, because Mr. Hause did not establish the remaining elements of the tort.

1. Mr. Hause's Conduct Did Not Further Any Public Policy Reflected by WISHA

To succeed on a wrongful discharge claim Mr. Hause must not only identify a mandate of public policy, but also show that his conduct furthered the policy. If Mr. Hause's claim falls within one of the four common categories of wrongful discharge,⁶ he is required to show his conduct was linked to the relevant public policy. *Martin v. Gonzaga University*, 191

⁶ The Court has recognized four common categories of wrongful discharge claims: "(1) where employees are fired for refusing to commit an illegal act; (2) where employees are fired for performing a public duty or obligation, such as serving jury duty; (3) where employees are fired for exercising a legal right or privilege, such as filing workers' compensation claims; and (4) where employees are fired in retaliation for reporting employer misconduct, *i.e.*, whistleblowing." *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 936, 913 P.2d 377 (1966).

Wn.2d 712, 725, 425 P.3d 837 (2018). If the Perritt test⁷ is instead applied, this requirement is encompassed by the jeopardy element, which necessitates an employee show his “conduct directly relate[d] to the public policy, or was necessary for the effective enforcement of” it. *Gardner*, 128 Wn.2d at 945.

If the Court finds that WISHA establishes a public policy that encompasses remediating workplace violence, Mr. Hause’s conduct did not further that policy. The trial court recognized Mr. Hause’s workplace violence complaint was instead focused on what he perceived to be inadequate discipline meted out to Ms. Boniecki, a coworker he did not like. CP 791. The intent of WISHA is to ensure worker safety, not to provide employees an avenue for challenging a supervisor’s decisions about disciplining coworkers.

⁷ When a plaintiff’s claim does not fall within one of the common categories of wrongful discharge, the plaintiff must satisfy the Perritt test, which requires showing: (1) the existence of a clear public policy (the clarity element); (2) that discouraging the conduct in which the employee engaged would jeopardize the public policy (the jeopardy element); (3) that the public-policy-linked conduct caused the discharge (the causation element); and (4) that the employer cannot offer an overriding justification for the discharge (the absence of justification element). *Gardner*, 128 Wn.2d at 941.

2. Mr. Hause Did Not Have a Reasonable Belief that the County Violated the Law, and His Conduct Was Not Reasonable

Prior cases involving employee complaints about safety issues encompassed by WISHA have been classified under the “whistleblowing” common category of wrongful discharge. *See, e.g., Martin*, 191 Wn.2d at 724; *Wilson*, 88 Wn. App. at 123. “[T]he focus for whistle-blowing matters is on the employer’s level of wrongdoing, not [the employee’s] actions to address what he perceived as wrongdoing.” *Martin*, 191 Wn.2d at 725. Therefore, “[i]n determining whether retaliatory discharge for employee whistleblowing activity states a tort claim for wrongful discharge under the public policy exception, courts generally examine the degree of alleged employer wrongdoing, together with the reasonableness of the manner in which the employee reported, or attempted to remedy, the alleged misconduct.” *Dicomes v. State*, 113 Wn.2d 612, 619, 782 P.2d 1002 (1989).

“In the retaliatory discharge context, Washington law has recognized a cause of action where an employee has an objectively reasonable belief that an employer has violated the law.” *Ellis v. City of Seattle*, 142 Wn.2d 450, 460, 13 P.3d 1065 (2000) (emphasis added). This Court has previously rejected wrongful discharge theories that did not meet this requirement. *See, e.g., Martin*, 191 Wn.2d at 725 (employee’s opinion that wall padding should be installed in basketball courts insufficient to establish wrongful discharge, because there was no legal requirement for it); *Farnam v. CRISTA Ministries*, 116 Wn.2d 659, 671, 807 P.2d 830 (1991) (reversing jury verdict in favor of employee who opposed the withdrawal of life sustaining procedures to patients, because her employer had not violated the law); *Dicomes*, 113 Wn.2d at 623 (employee failed to establish wrongful discharge even though she “reported what she felt constituted a blatant disregard on the part of [her employer] for statutorily prescribed budgetary action,” because the Court did “not find any violation of state law”). Mr. Hause’s

complaint alleged misconduct by Ms. Boniecki, but the reported misconduct was, at most, a violation of County policy, not any law. More importantly, Mr. Hause had no reasonable belief that the County had violated any law.

The manner in which Mr. Hause reported what he contends was a workplace safety concern was also unreasonable. He complained pursuant to a policy that required incidents be reported immediately to both risk management and his direct supervisor, but he waited over six months to make the complaint and deliberately did not tell his supervisors.

3. Mr. Hause Was Motivated By Private or Proprietary Interests Rather Than the Public Good

Because wrongful discharge claims are permitted only where an employee is seeking to further public policy goals, the employee must have been seeking to “further the public good, and not merely private or proprietary interests.” *Farnam*, 116 Wn.2d at 671 (quoting *Dicomes*, 113 Wn.2d at 620); *See also Ellis*, 142 Wn.2d at 461 (noting plaintiff’s “motive was

protection of the public.”). For example, in *Farnam* the Court held statements by the plaintiff, a nurse who objected on religious grounds to her employer’s lawful practices relating to the removal of nasal gastric feeding tubes, “raise[d] questions about her motive” such that she had no claim. *Farnam*, 116 Wn.2d at 670-71. The Court stated that “[w]hile the sincerity of Farnam’s belief is not questioned, her concern appears to be directed at urging Christian health care providers to adopt her view rather than furthering the public good.” *Id.* at 671-72.

Here, Mr. Hause plainly had a personal motive in filing the workplace violence complaint. He disliked Ms. Boniecki and was unhappy with the results of the criminal and internal affairs investigations about her. In his texts with Mr. Schlosser, wherein they bemoaned the unsubstantiated findings in these investigations, he stated he would be “coming hard after them” and ramping up his efforts to make life “miserable” when he returned to work. CP 138. Mr. Hause’s suspiciously timed

complaint against Ms. Boniecki was part of this premeditated campaign of harassment, not in furtherance of the public good.

4. The County Provided a Legitimate Non-Pretextual Reason or Overriding Justification for Mr. Hause's Termination

Washington courts apply an evidentiary burden-shifting protocol to resolve wrongful discharge claims. *Martin*, 191 Wn.2d at 725-26. If Mr. Hause establishes a *prima facie* case, the burden shifts to the County to articulate a non-retaliatory reason for his termination. *Id.* at 725-26. If it does so, the burden shifts back to Mr. Hause to establish the reason is pretextual or that the public-policy-linked conduct was nevertheless a substantial factor motivating the termination. *Id.* Here, the Sheriff terminated Mr. Hause, because he knowingly made false, misleading or malicious statements in violation of office policies. CP 216.

To show an employer's reason for termination is pretext, the employee must show "the proffered justification has no basis in fact, is an unreasonable ground upon which to base the

decision, or was not a motivating factor in employment decisions for other similarly-situated individuals.” *Williams v. Dept. of Social and Health Services*, 24 Wn.App.2d 683, 700, 524 P.3d 658 (2022). Mr. Hause never made any such showing.

Law enforcement agencies have a recognized interest in ensuring that their “employees are of the highest moral and ethical character possible.” *O’Hartigan v. Dept. of Personnel*, 118 Wn.2d 111, 124, 821 P.2d 44 (1991); *See also Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The County’s interest includes “ensuring a high level of trustworthiness and personal integrity among its employees.” *O’Hartigan*, 118 Wn.2d at 123. Regardless of how strong Mr. Hause’s job performance was, termination is appropriate where an employee has made false or misleading statements to his employer. *See, e.g., McDaniels v. Group Health Co-op*, 57 Supp.3d 1300, 1312 (W.D. Wash. Oct. 29, 2014) (coworker not a proper comparator where he “did not lie during the investigation of his misconduct,” as plaintiff had).

The Court should also find these interests by the County are an overriding justification sufficient to overcome Mr. Hause's wrongful discharge claim based on the final element of the Perrit test. "The overriding justification element entails balancing the public policies raised by the plaintiff against the employer's interest." *Martin*, 191 Wn.2d at 728. Stated simply, the Court should hold that the County's interest in requiring a high degree of ethics and honesty by its law enforcement personnel is an interest overriding any public policy at issue here.

Last, Mr. Hause has no evidence that he was treated differently than any other Sheriff's Office employees who made false or misleading statements during an internal affairs investigation, particularly where the underlying motivation for deception was to hide evidence of an intent to target and harass a coworker. After cross-discovery motions early in the litigation, the County was ordered to produce all internal affairs investigations of its employees that involved allegations of

dishonesty. Mr. Hause has never cited to any of those investigations, because they reflect that Sheriff's Office employees who engaged in similar misconduct were also terminated.

V. CONCLUSION

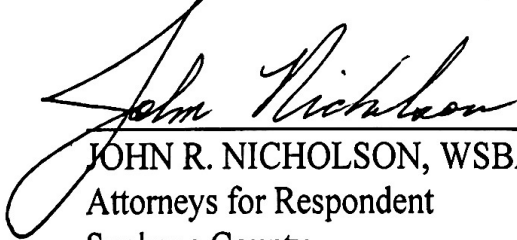
For all the forgoing reasons, Mr. Hause's petition for review should be denied. If it is granted, the Court should also accept review of the issues identified by the County herein, which are alternative bases for affirming summary judgment in its favor.

VI. CERTIFICATION

I hereby certify this Answer to Petition for Review contains 4,994 words pursuant to RAP 18.17(b).

DATED this 26th day of September, 2024.

JACKSON & NICHOLSON, P.S.



JOHN R. NICHOLSON, WSBA #30499
Attorneys for Respondent
Spokane County

DECLARATION OF SERVICE

On said date below I served a copy of Respondent's Answer to Petition for Review to the following parties by the method indicated below:

Heather C. Barden
Barden & Barden PLLC
PO Box 8663
Spokane, WA 99203
heather@bardenandbarden.net
madeleine@bardenandbarden.net

☒ Via Washington State
Appellate Courts' Portal
☐ ABC/Legal Messenger
☒ Email

Max K. Archer
Riverside Law Group, PLLC
905 W. Riverside Avenue
Suite 404
Spokane, WA 99201
mka@riverside-law.com

☒ Via Washington State
Appellate Courts' Portal
☐ ABC/Legal Messenger
☒ Email

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

DATED this 26th day of September, 2024, at Olympia,
Washington.



JENNY SINGLETON, Paralegal
JACKSON & NICHOLSON, P.S.

APPENDICES

Appendix A	Plaintiff's Amended Complaint (CP 75-82)
Appendix B	Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment (CP 283-305)
Appendix C	Plaintiff's Response Brief in Opposition to Defendant's Motion for Reconsideration (CP 682-698)

Appendix A

1 HEATHER C. BARDEN, WJBA #49316
2 Barden & Barden PLLC
3 P.O. Box 8663
4 Spokane, WA 99203
5 509.315.8089 (P)
6 509.381.2159 (F)
7 heather@bardenandbarden.net
8 *Attorneys for Plaintiff*

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

11
12 CHARLES HAUSE, an individual,

No. 21-2-03239-32

13 Plaintiff,

AMENDED COMPLAINT

14 v.

15
16 SPOKANE COUNTY, a Washington
17 Municipal Corporation,

18 Defendant.
19

20 **PARTIES, JURISDICTION, AND VENUE**

21
22 1. Plaintiff Charles Hause resides in the City of Spokane located in Spokane County,
23 Washington.

24 2. Defendant Spokane County is a municipal corporation operated and located in
25 Spokane County, Washington.

26 3. Plaintiff's cause of action arose in Spokane County, Washington.

27 4. Jurisdiction is proper pursuant to RCW 2.08.010.

28 5. Venue is proper pursuant to RCW 4.12.020 and 4.12.025.
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FACTUAL SUMMARY

6. On or about January 1, 2012, Mr. Hause was hired by Spokane County Sheriff's Office ("Sheriff's Office") as a Forensic Technician.

7. On or about June 2016, Mr. Hause was promoted to Forensic Specialist by the Sheriff's Office, and aside from Mr. Hause's termination on April 12, 2021, Mr. Hause was an exemplary employee while employed by the Sheriff's Office. Mr. Hause received praiseworthy performance evaluations before his termination. For example, Mr. Hause received the "Medal of Merit" award in January 2020 from the Sheriff's Office for his exemplary work within the Spokane County Forensic Unit.

8. On or about February 2020, an employee in the Sheriff's Office Forensic Unit engaged in an emotionally aggressive outburst that involved throwing a water bottle while at work in the Forensic Unit ("water bottle incident").

9. On or about April 1, 2020 the criminal act of keying¹ a Spokane County employee's (a former employee of the Forensic Unit) personal vehicle was committed. It was determined that the possible violator was the same employee of the Sheriff's Office Forensic Unit that threw a water bottle while at work.

10. On or about May 21, 2020 an Internal Affairs ("IA") investigation was initiated concerning the Forensic Unit employee accused of keying. The Forensic Unit employee was then placed on administrative leave.

11. On or about May 28, 2020 the criminal investigation of the Forensic Unit employee was completed.

12. On or about June 22, 2020 the Spokane City Prosecutor's Office ("SCPO"), specifically City Prosecutor Andrew Warlaumont, declined to criminally charge the Forensic Specialist

¹"keying" is the act of using the small end of a key to scratch or create a dent in a vehicle.

1 accused of keying, even though there was circumstantial evidence that the Forensic Unit
2 employee committed the criminal act.

3
4 13. On or about July 29, 2020 the IA investigation concerning the criminal act of keying
5 was completed.

6 14. On or about August 4, 2020 the Forensic Unit employee—that the SCPO found
7 circumstantial evidence to have committed the crime of keying—was returned to work.

8
9 15. On or about September 9, 2020 the Sheriff Office's Forensic Unit had a meeting where
10 the Forensic Unit supervisor provided inaccurate facts pertaining to the keying investigation.
11 On this same date following the unit meeting, the Forensic Unit supervisor was asked by Mr.
12 Hause if he was aware of the water bottle incident that happened in February 2020. The
13 Forensic Unit Supervisor stated that he "vaguely" remembered the incident, indicating that he
14 had not investigated the water bottle incident.

15
16 16. On or about September 18, 2020 Mr. Hause filed a workplace violence complaint
17 concerning the water bottle incident that had not been investigated. Coincidentally on the
18 same day, the Forensic Unit Lieutenant had a "check-in" meeting with the Forensic Unit
19 employee who was named in the workplace violence complaint as the perpetrator. Shortly
20 thereafter, an IA investigation was initiated concerning the water bottle incident.

21
22 17. On or about September 22, 2020 the Spokane County employee victim of keying was
23 informed that the Spokane City Prosecutor's Office ("SCPO"), specifically City Prosecutor
24 Justin Bingham, determined that there was circumstantial evidence to believe on 4/1/2020
25 that the Forensic Unit employee intentionally caused physical damage to the personally owned
26 vehicle of the Spokane County employee while the vehicle was parked in "J" lot on the east
27 end of the jail.

28
29 18. On or about September 30, 2020 Mark Cipolla, former Spokane County Chief Criminal
30 Deputy emailed the Sheriff's Office with the September 22, 2020 letter from SCPO stating
31

1 that the Sherriff's Office was to refrain from using the word "exoneration" in relation to the
2 Forensic Specialist accused of keying a Spokane County employee's personal vehicle.

3
4 19. On or about October 7, 2020 the IA investigation concerning the water bottle incident
5 was completed. Although the water bottle incident was supported to have occurred by
6 statements provided, no action was taken against the Forensic Unit employee with noted anger
7 issues i.e., targeted keying of an employee's personal vehicle, in addition to throwing a water
8 bottle in a fit of anger at work.

9
10 20. On or about October 9, 2020 in retaliation against Mr. Hause for lodging a workplace
11 complaint, the Sheriff's Office initiated an IA investigation against Mr. Hause for unsupported
12 and unsubstantiated policy violations i.e., pretext to build their case against Mr. Hause for
13 lodging workplace safety concerns.

14
15 21. During Mr. Hause's IA investigation concerning the water bottle incident, Mr. Hause
16 also lodged concerns to his superiors that the Sheriff's Office and the Spokane City
17 Prosecutor's Office were unethically protecting the accused Forensic Unit employee i.e., not
18 bringing forth criminal charges where circumstantial evidence was found against the accused
19 for keying, as they did with most (if not all) citizens of Spokane County when evidence of a
20 crime is established.

21
22 22. On or about November 18, 2020 Mr. Hause lodged a concern about the Forensic Unit
23 employee—the perpetrator of the keying and water bottle incident—posting a vulgar,
24 inappropriate sign in the workplace directed at him that said "thou shall not stress over the
25 opinion of an irrelevant little bitch." The employee was made to take down the sign; however,
26 the employee then replaced it with another sign—directed at Mr. Hause—that stated, "the
27 lion does not concern himself with the opinions of the sheep."

28
29 23. On or about January 7, 2021 in retaliation against Mr. Hause for voicing his concern
30 regarding unethical government conduct and a hostile work environment (e.g., vulgar signage),
31

1 the Sheriff's Office lodged a second charge to the IA investigation against Mr. Hause for (yet
2 again) unsupported and unsubstantiated policy violations i.e., further pretext in preparation to
3 unjustly terminate Mr. Hause.
4

5 24. On or about March 8, 2021 Mr. Hause received a letter from Sheriff Ozzie Knezovich
6 titled "POTENTIAL DISCIPLINARY ACTION."

7 25. On or about April 12, 2021 Mr. Hause received a letter—dated April 8, 2021—from
8 Sheriff Ozzie Knezovich titled "Termination." On that same day, Mr. Hause was formally
9 terminated from his employment with the Spokane County Sheriff's Office by Sheriff Ozzie
10 Knezovich.
11

12 26. On or about April 15, 2021 in response to the wrongful termination, the American
13 Federation of State, County and Municipal Employees ("AFSCME") Union filed a grievance
14 for multiple Collective Bargaining Agreement violations.
15

16 27. On or about June 23, 2021, a Spokane County Claim for Damages Form was mailed
17 to Spokane County Department of Risk Management at 1033 W. Gardner Spokane, WA
18 99260 on behalf of Mr. Hause.
19

20 28. On June 28, 2021 a Spokane County Claim for Damages Form was hand delivered to
21 Spokane County Department of Risk Management at 1033 W. Gardner Spokane, WA 99260
22 on behalf of Mr. Hause.

23 29. On August 23, 2021 Spokane County Sheriff Ozzie Knezovich denied AFSCME's
24 grievance on behalf of Mr. Hause.
25

26 30. To date, Spokane County, the Sheriff's Office and the Sheriff have yet to acknowledge
27 or address Mr. Hause's Spokane County Claim for Damages Form.
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1 **FIRST CAUSE OF ACTION – WASHINGTON LAW AGAINST**
2 **DISCRIMINATION (WLAD)—RETALIATION**
3

4 31. The conduct of Defendant and employees of the Defendant and its agents has violated
5 the Washington Law Against Discrimination, RCW 49.60 *et seq.*

6 32. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered
7 economic and noneconomic damages to be proven at the time of trial.
8

9 **SECOND CAUSE OF ACTION –WHISTLEBLOWER RETALIATION**

10 33. The conduct of Defendant and employees of the Defendant and its agents have
11 violated Spokane County's and Spokane County Sheriff's Office policies and procedures for
12 Whistleblowers/Anti-retaliation and RCW 42.20 *et seq.*
13

14 34. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered
15 economic and noneconomic damages to be proven at the time of trial.
16

17 **THIRD CAUSE OF ACTION – RETALIATION FOR ENGAGING IN UNION**
18 **PRACTICES**

19 35. The conduct of Defendant and employees of the Defendant and its agents has
20 violated RCW 41.56 *et seq.*

21 36. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered
22 economic and noneconomic damages to be proven at the time of trial.
23

24 **THIRD CAUSE OF ACTION – WRONGFUL TERMINATION**
25 **IN VIOLATION OF PUBLIC POLICY**
26

27 37. Defendant's conduct towards Plaintiff was in violation of public policy.

28 38. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered
29 noneconomic and economic damages to be proven at the time of trial.
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CERTIFICATE OF SERVICE

I, Heather C. Barden, certify that on November 10, 2022 I caused to be served a true and correct copy of the foregoing via the method indicated below and addressed to the following:

John R. Nicholson, Attorney for Spokane County Jackson & Nicholson Phone: 206-582-6001 Fax: 206-466-6085 john@jnseattle.com jenny@jnseattle.com kimberly@jnseattle.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery – Messenger Service <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax <input checked="" type="checkbox"/> E-Mail
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

s/Heather C. Barden
Heather C. Barden, WSBA #49316

Appendix B

FILED

1/06/2023

Timothy W Fitzgerald

Spokane County Clerk

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

CHARLES HAUSE, an individual,

Plaintiff,

v.

SPOKANE COUNTY, a Washington
Municipal Corporation,

Defendant.

No. 21-2-03239-32

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

INTRODUCTION

There is a clear mandate of public policy in this state to protect employees from being fired for reporting workplace violence and/or improper governmental conduct. The judicial enforcement of this policy is critical to: (i) promoting safe workplaces and (ii) encouraging whistleblowers to come forward.

In this case, a talented public servant—that is, a Forensic Specialist with a sterling employment record—implores the Court to enforce the foregoing policy by ensuring his wrongful discharge in violation of public policy and other employment-related claims reach

PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT 1


BARDEN & BARDEN

1 the jury. The municipal employer, however, asks the Court to leave its former Forensic
2 Specialist without redress by ruling that employers may freely fire employees for reporting
3 workplace violence and/or improper governmental conduct. To grant such a request is to
4 tacitly endorse the termination of good faith reporters and whistleblowers because their
5 reports create perceived headaches for employers (e.g., administrative chores and expenses,
6 workplace investigations, and the threat of holding the powers that be accountable for their
7 improper conduct). The chilling effect that will follow must be avoided, workplaces must be
8 safe, and, accordingly, the employer's position in this case must be rejected.

14 The identities of the public servant and municipal employer are Plaintiff Charles Hause
15 and Defendant Spokane County ("County"). For over 20 years now, the Spokane County
16 Sheriff's Office (the "SCSO" or the "County") expected workers in the SCSO Forensic Unit,
17 including Mr. Hause, to work with and protect themselves against an angry, aggressive, and
18 violent co-worker, Trayce Boniecki. Eventually, Mr. Hause nobly reported an instance of Ms.
19 Boniecki's workplace violence, as well as their supervisors' contribution to the unsafe work
20 environment. The County retaliated by terminating Mr. Hause's employment.

25 Like his wrongful discharge claim, which stems from the public policy outlined above,
26 Mr. Hause's whistleblower claim is premised on SCSO supervisors using their authority and
27 discretion to contribute to over 20 years of violent and aggressive outbursts by Ms. Boniecki.
28 Examples of Ms. Boniecki's workplace behavior include countless instances of violently
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PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT 2


BARDEN & BARDEN

1 slamming County property; aggressively cursing at co-workers; hurling a spray bottle across
2 the Forensic Unit; and, by all accounts, keying a former co-worker's car. Each time, County
3 supervisors did nothing to create a safe, professional working environment. In fact, County
4 supervisors added fuel to the fire by protecting Ms. Boniecki at every turn and by threatening
5 discipline for those who voice concerns about Ms. Boniecki's behavior.
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9 For instance, in September 2020, County supervisors called a staff meeting for the sole
10 purpose of addressing the fear created by Ms. Boniecki's presence in the Forensic Unit. At the
11 meeting, County supervisors threatened to discipline any worker that discussed Ms. Boniecki's
12 inappropriate workplace behavior. Mr. Hause attended the meeting; heard his supervisors'
13 warning; and knew from nearly a decade's worth of personal experience with the County's
14 corrupt, complicit supervisors that Ms. Boniecki would continue to be violent and aggressive.
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19 Nevertheless, after the meeting, Mr. Hause bravely reported one of Ms. Boniecki's
20 more recent violent outbursts (shouting and cursing at a co-worker and then, minutes later,
21 hurling a spray bottle across the Forensic Unit) to his immediate supervisor. Unsurprisingly,
22 his supervisor did nothing. Mr. Hause's ongoing and escalating safety concerns prompted him
23 to approach his Union, who, in turn, advised Mr. Hause to report the SCSO's abuse of
24 authority, as well as Ms. Boniecki's spray bottle throwing, curse-laden temper tantrum to the
25 County's Risk Management Office ("Risk Management"). Mr. Hause promptly followed this
26 advice and filed a workplace violence complaint detailing the foregoing matters.
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PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT 3


BARDEN & BARDEN

1 Risk Management failed to protect Mr. Hause as a whistleblower. Instead—without
2 contacting Mr. Hause or his Union Representative, Gordon Smith, and, further, without
3 investigating Mr. Hause’s workplace violence complaint—Risk Management passed the buck
4 to the SCSO, asked them to deal with it, and—in violation of County policy—disclosed Mr.
5 Hause as the complainant. Then, within weeks, the SCSO launched an internal affairs
6 investigation into Mr. Hause and terminated his employment. The SCSO pretends its
7 termination decision was due to Mr. Hause offering allegedly misleading and false statements
8 in his complaint and investigation interviews. However, no such false or misleading statements
9 exist. The SCSO’s excuse for the firing is so ridiculous, disingenuous, and pretextual, the
10 County’s moving papers only briefly discuss it, and when they do, they use the broadest, most
11 conclusory language possible. The County simply cannot genuinely articulate any false or
12 misleading statements made by Mr. Hause at any point in time.
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21 **STATEMENT OF RELEVANT AND DISPUTED FACTS**

22 **A. THE COUNTY ADMITS MR. HAUSE HAD A PRISTINE EMPLOYMENT RECORD AND WAS** 23 **BOTH, TREMENDOUSLY PRODUCTIVE AND EMOTIONALLY INTELLIGENT.**

24 Mr. Hause was hired by the SCSO in January 2012 as a Forensic Technician and was
25 subsequently promoted in June 2016 to a Forensic Specialist. Dkt. Entry #83 p.1 ll.20-23.
26
27 Aside from the SCSO’s termination of Mr. Hause on April 12, 2021, he was an exemplary
28 employee, both from an interpersonal and productivity standpoint. *See* Decl. H.Barden ¶¶ 2-4
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31 **Ex. A** Thompson dep p.127:11-14; **Ex. B** Miller dep. pp.71:19-21, 72:7-21; **Ex. C;** Decl.

PLAINTIFF’S RESPONSE IN OPPOSITION
TO DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT 4


BARDEN & BARDEN

1 L.Preuninger ¶¶ 6-8; Decl. Todd ¶¶ 7-10; Decl. Meyers ¶ 7; Decl. Dewey ¶¶ 5-10 and 17; Decl.
2 Storment ¶¶ 5-8. Contrary to the Defendant's assertion, Mr. Hause was heavily involved in
3 union activity and was the Union Vice President for a two-year term where he represented
4 and negotiated beginning to end one of the Forensic Unit's Collective Bargaining Agreement,
5 492RF. Decl. Hause ¶ 3. SCSO also knew he was frequently involved and active in the union
6 regarding negotiations and personnel matters prior to me being investigated and subsequently
7 fired. *Id.*

12 **B. THE COUNTY ADMITS MS. BONIECKI'S UNCONTROLLABLE AND UNPREDICTABLE**
13 **TEMPER CAUSED WORKPLACE ISSUES.**

14 Lieutenant ("Lt.") Kristopher Thompson, Larissa Miller, and Lyle Johnston supervised
15 Mr. Hause, Ms. Boniecki (a Forensic Specialist), and their co-workers in the Forensic Unit. *See*
16 **Ex. B** pp. 8:6-25, 9:1-13. Lt. Andrew Buell was head of the SCSO's Office of Professional
17 Standards ("OPS") regarding all internal affairs ("IA") investigations. *See* Decl. H.Barden ¶ 6
18 **Ex. E** Buell dep. p.161:7-25. John Nowels was the Undersheriff and above Lt. Buell in rank
19 at the SCSO. *Id.* at **Ex. E** p.158:1-3. But for Sheriff Nowels, who has yet to be deposed, the
20 foregoing supervisors have each conceded that, unlike Mr. Hause, Ms. Boniecki has a
21 conspicuously long history of (i) rumor mongering; (ii) poor performance; and (iii) erratic,
22 aggressive, and violent outbursts that escalated throughout the years. *Id.* at ¶ 5 **Ex. D**; Decl.
23 L.Preuninger ¶¶ 9-12; Decl. Todd ¶¶ 14-18 and 26; Decl. Storment ¶¶ 12-18; Decl. Micke ¶¶
24 6-12; Decl. Dewey ¶¶ 11, 14-15; Decl. Meyers ¶¶ 8-10.

25 PLAINTIFF'S RESPONSE IN OPPOSITION
26 TO DEFENDANT'S MOTION FOR SUMMARY
27 JUDGMENT 5

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29 BARDEN & BARDEN
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1 1. **Within a Three-Month Period, Ms. Boniecki Shouted and Cursed at a**
2 **Co-Worker; Violently Threw a Spray Bottle Across the Forensic Unit; and**
3 **Became the Sole Suspect in Keying a County Employee's Vehicle.**

4 In February 2020, for instance, Ms. Boniecki threw a characteristic, though especially
5 aggressive, tantrum in the Forensic Unit. *Id.* at ¶¶ 7-8 **Ex. F** and **Ex. G** p.5. This incident
6 involved Ms. Boniecki shouting and cursing at a co-worker and, minutes later, recklessly
7 hurling a spray bottle across the Forensic Unit, which is a shared, open room where all SCSO
8 Forensic Technicians and Specialists work. *Id.* Then, *less than three months later*, Ms. Boniecki
9 became the City Prosecutor's sole criminal suspect for keying¹ a car parked in the County
10 employee parking lot and belonging to a fellow County employee, with whom Ms. Boniecki
11 had previously worked in the Forensic Unit and had a falling out. *Id.* at ¶ 9 **Ex. H**.

12 On or about May 21, 2020, Ms. Boniecki faced an IA investigation (No. 2020-0021)
13 (the "Boniecki IA Investigation"), as well as a criminal investigation referred to and lodged by
14 the City of Spokane Police Department. *Id.* at ¶ 10 **Ex. I** p.2. The SCSO stayed the Boniecki
15 IA Investigation until the criminal investigation was complete. *Id.* at p.12. At the completion
16 of the criminal investigation, it was found that there was circumstantial evidence to support
17 the conclusion that Ms. Boniecki keyed her fellow County employee's car and, thereby,
18 committed the crime of Malicious Mischief in the 2nd Degree. *Id.* at ¶ 11 **Ex. J**.

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31 ¹ "Keying" is the act of using the small end of a key to scratch or create a dent in a vehicle.

1 On July 9, 2020, Lt. Buell resumed the Boniecki IA Investigation. *See* **Ex. I** p.3. There
2 is ample circumstantial evidence to show that Ms. Boniecki keyed the County employee's car
3 (e.g., security camera footage revealed that (i) Ms. Boniecki was the only person to walk by the
4 County employee's car on the day the keying occurred and (ii) Ms. Boniecki was holding her
5 keys in her hand closest to the car when she walked by the car). *See* **Ex. I** p.11; **Ex. E.** p.9:2-
6 25, 28:3-25, 29:1-5, 63:13-25, 64:1-9; *see also* **Ex. J.** Lt. Buell was fully aware of this evidence,
7 and yet, he did not find by a preponderance of evidence that Ms. Boniecki violated *any* County
8 policies. *See* **Ex. I** p.11; **Ex. E.** p.9:2-25, 28:3-25, 29:1-5, 63:13-25, 64:1-9; *see also* **Ex. J.**
9 Inexplicably, Lt. Buell elected instead to use the standard for criminal acts—beyond a
10 reasonable doubt in the Boniecki IA Investigation. **Ex. E** p.63:13-25, 64:1-9.

11 Ms. Boniecki's criminal and IA interviews also contained several obvious
12 inconsistencies and lies. For instance, Ms. Boniecki lied to Lt. Buell about text messages that
13 were asked of her by the criminal investigator. **Ex. H** p.7-8; **Ex. I** p.9. And though she
14 indicated in her criminal report that she knew to whom the keyed vehicle belonged, Ms.
15 Boniecki stated in her IA investigation that she did not know who owned the vehicle. **Ex. H**
16 p.6-7; **Ex. I** p.10. Nevertheless, nothing was done by the SCSO, and on or about August 2020,
17 Ms. Boniecki returned to work. **Ex. I** p.1.

18 On or about September 9, 2020, after a staff meeting for the Forensic Unit at SCSO
19 concerning the criminal investigation of Ms. Boniecki's keying a Spokane County employee's
20

1 vehicle, Mr. Hause raised the concern to his Supervisor Lyle Johnston regarding Ms. Boniecki's
2 outburst with a spray bottle in February 2020. Decl. Hause ¶¶ 9-13. Lyle Johnston indicated
3 that he only "vaguely" remembered the incident, indicating it had not been investigated,
4 addressed, or even remotely noteworthy to him. *Id.* Thus, contrary to what the County claims
5 in its "Statement of Facts," Mr. Hause *did* inform his supervisors about the spray bottle
6 incident; however, his supervisors did nothing yet again. *Id.* This is further supported by the
7 fact that there is no document, other than Mr. Johnston's post hoc write-up in September
8 claiming he investigated the spray bottle incident in February 2020. **Ex. G** p.15-16 *see also* **Ex.**
9 **D.** Also, Mr. Johnston upon coming aware of the throwing of a spray bottle failed to report
10 this to Risk Management as required by Spokane County's Workplace Violent Policy. *See* Dkt.
11 Entry #82 Decl. Cameron **Ex. 5**; *see also* **Ex. A** Thompson dep. p.49:5-15.

19 Worried for the safety of the Forensic Unit; troubled by his derelict, compromised
20 supervisors; and having recently learned the SCSO took no meaningful action to investigate
21 Ms. Boniecki's angry, spray bottle throwing tirade, Mr. Hause felt compelled to provide Risk
22 Management with a workplace violence complaint about these issues—i.e., Ms. Boniecki's
23 spray bottle incident in February 2020 and his supervisors' abuse of authority and derelict of
24 their duties.² Decl. Hause ¶¶ 4-13; Decl. H.Barden ¶ **Ex. L** Hause dep. Pp. 171:18-25, 172,

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² This disputes Defendant's Motion for Summary Judgment fact section. *See* Dkt. Entry #8
pp.3:21-26, 4:1-18.

1 175:20-25, 176:1-13; **Ex. F.** This was all at the direction and advice of his Council 2 Union
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3 Steward, Gordon Smith. *Id.* at ¶ 15

4 Risk Management is responsible for investigating or delegating the responsibility of
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6 investigating each and every workplace violence complaint made by a County employee. Decl.
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8 Archer ¶¶ 3-5 **Ex. A, B and C** Bartel Dep. 97:22-25, 98:1-4, 102:25, 103:1-25, 104:1-25, 105:1-
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10 5. Accordingly, upon receipt, Risk Management specifically asked Lt. Buell at the SCSO OPS
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12 to investigate whether workplace violence complained of by Mr. Hause occurred. *Id.* **Ex. C**
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14 45:14-25, 46:1. According to the Director of Risk Management, the complainant in a
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16 workplace violence complaint must always, 100 percent of the time, be interviewed. Decl. H.
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18 *Id.* at Ex C 102:1, 103:1-25. Here, Mr. Hause was never interviewed when Lt. Thompson
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20 investigated the complaint. *See* **Ex. G**; Decl. Hause ¶ 17.

21 **C. TWO DAYS AFTER CLOSING THE SECOND IMPROPERLY HANDLED BONIECKI IA**
22 **INVESTIGATION, THE SCSO INITIATED AN IA INVESTIGATION AGAINST THEIR BEST**
23 **FORENSIC SPECIALIST, MR. HAUSE.**

24 Lt. Thompson completed the Second Boniecki IA Investigation on October 7, 2020.
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26 *See* **Ex. G** p.7. Although employee interviews proved that the spray bottle incident occurred
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28 as Mr. Hause stated in his complaint, and though Lt. Thompson now agrees that Ms. Boniecki
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30 committed workplace violence, Lt. Thompson concluded that no County policies were
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violated and no action should be taken against Ms. Boniecki or any of the supervisors. *Id.* at 5
and 7; *see also* **Ex. A** 36:18-25, 37:1-25, 38:1-6.

1 Instead, the SCSO took action against Mr. Hause. *See* Decl. H.Barden ¶ 12 **Ex. K**; *see*
2
3 *also* Dkt. Entry #79 Nicholson Decl. **Ex. 3**. Two days later (October 9, 2020), the SCSO
4 initiated an IA investigation against Mr. Hause for fabricated, pretextual policy violations, e.g.,
5 that his statements were false/misleading: (i) because the spray bottle incident did not occur
6 as stated in Mr. Hause’s complaint (however, it did occur as stated); (ii) because Mr. Hause
7 was “harassing” Ms. Boniecki by asking their supervisor about bench notes and if he could
8 work remotely every so often like Ms. Boniecki; and (iii) because Mr. Hause did not report the
9 workplace violence to his corrupt supervisors (which he did in September 2020). *See* Decl.
10 H.Barden ¶ 12 **Ex. K**; *see also* Dkt. Entry #79 Nicholson Decl. **Ex. 3**; Decl. Hause ¶¶ 9-13.
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16 Also, equally disturbing, is the SCSO also belittled and discriminated against Mr. Hause
17 for bringing forward safety concerns regarding Ms. Boniecki by implying that “how could he
18 fear for his safety as a man from a woman?” and that his safety concerns were preposterous.
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20 **Ex. L** pp.166:14-25, 167:8-25, 168:1-25, 169:1-19; Decl. Hause ¶ 33.
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22 **D. MS. BONIECKI AGAIN CREATED A HOSTILE WORK ENVIRONMENT, AND THE COUNTY,**
23 **AGAIN, DID NOTHING OTHER THAN TERMINATE MR. HAUSE.**
24

25 After the closure of the Second Boniecki IA Investigation and the commencement of
26 the Hause IA Investigation, Ms. Boniecki placed signs at her desk directed at Mr. Hause. Decl.
27 Hause ¶¶ 19-24 **Ex. AA**. The Defendant claims that the sign had been there for over two
28 years; however, it had not. *Id.* The first sign stated “**thou shall not stress over the opinion**
29 **of an irrelevant little bitch.**” *Id.* Mr. Hause informed their supervisor he felt the sign was
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1 directed at him and that he found it threatening and offensive. *Id.* The supervisor then
2 proceeded to assure Ms. Boniecki that she felt the sign was fine, but that she should
3 nevertheless take it down. *Id.* Ms. Boniecki did so, but immediately replaced it with another
4 offensive sign directed at Mr. Hause that stated, “the lion does not concern himself with the
5 opinions of sheep.” *Id.* The County’s claim that Mr. Hause should have not been near Ms.
6 Boniecki’s desk in the first place is also not true—it was a regular practice for forensic
7 employees in the small, open desk office to walk over and search for files on or near a co-
8 worker’s desk. *Id.*

14 In further retaliation against Mr. Hause for complaining about Ms. Boniecki’s
15 continued harassment and the supervisors’ contributions to a hostile, unsafe work
16 environment, the SCSO added a second fabricated, pretextual charge to the Hause IA
17 investigation because Mr. Hause had minor, understandable memory lapses and opinions
18 regarding the criminal and IA investigation against Ms. Boniecki. *See* Decl. H.Barden ¶ 14 **Ex.**
19 **M**; Hause Decl. ¶¶ 25-32.

24 Finally, the SCSO terminated Mr. Hause’s employment on April 15, 2021 for allegedly
25 making “false or misleading” statements. *See* Decl. Nowels ¶ 17 **Ex. 9**. Again, to this day, the
26 County cannot genuinely articulate any misleading or false statements. Decl. Hause ¶¶ 18, 25-
27 31. The American Federation of State, County and Municipal Employees (“AFSCME”) Union
28 subsequently filed a grievance on behalf for SCSO to no avail. The AFSCME Union Council-
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2, Gordon Smith has also provided that SCSO's termination of Mr. Hause is "one of the most baseless terminations I've seen in my 23-year career." See Decl. G.Smith ¶ 20.

LAW AND ANALYSIS

A. ALL FACTS AND REASONABLE INFERENCES THEREFROM MUST BE CONSTRUED IN FAVOR OF MR. HAUSE, AND THE COUNTY'S MOTION MUST BE DENIED IF A GENUINE QUESTION OF FACT EXISTS.

The County's Motion must be denied unless the Court finds that (i) there are no genuine issues of material fact and (ii) the County is entitled to judgment as a matter of law. CR 56(c). The court must also construe all facts and reasonable inferences therefrom in the light most favorable to Mr. Hause. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 226 (1989).

B. THE COUNTY VIOLATED A CLEAR MANDATE OF PUBLIC POLICY—THAT IS, IT RETALIATED AGAINST A PUBLIC EMPLOYEE FOR REPORTING AN UNSAFE WORK ENVIRONMENT.

An employee is wrongfully discharge in violation of public policy whenever (1) his "discharge may have been motivated by reasons that contravene a clear mandate of public policy;" (2) discouraging the conduct in which the employee engaged would jeopardize the public policy; (3) "the public-policy-linked conduct was a significant factor in the decision to discharge;" and (4) there is no overriding justification for the discharge. *Mackey v. Home Depot USA, Inc.*, 12 Wn.App.2d 557, 578-79 (2020).

"When a direct relationship holds between the employee's conduct and the public policy, the employer's discharge of the employee for engaging in that conduct inherently

1 implicates the public policy.” *Martin v. Gonzaga University*, 200 Wn.App. 332, 402 P.3d 294,
2 (Div. 3 2017). Further, being fired for coming forward about government misconduct and
3 workplace violence actions will discourage similar future conduct in other employees. “If
4 employers are allowed to terminate their employees for saving persons from [workplace
5 violence] situations when the employee appears to be the only hope [], then the policy
6 encouraging all citizens to engage in such conduct would be jeopardized.” *Gardner v. Loomis*
7 *Armored Inc.*, 128 Wash. 2d 931, 946, 913 P.2d 377, 385 (1996). The causation element in a
8 wrongful discharge claim “is not an all-or-nothing proposition.” *Rickman v. Premera Blue Cross*,
9 184 Wn.2d 330, 314 (2015). “The employee need not attempt to prove the employer’s sole
10 motivation was retaliation.” *Wilmot v. Kaiser Aluminum & Chemical Corp.*, 118 Wn.2d 46, 70, 821
11 P.2d 18 (1991). “Instead, the employee must produce evidence that the actions in furtherance
12 of public policy were a cause of the firing, and the employee may do so by circumstantial
13 evidence.” *Rickman v. Premera Blue Cross*, 184 Wn.2d at 314. “This test asks whether the
14 employee’s conduct in furthering a public policy was a substantial factor motivating the
15 employer to discharge the employee.” *Rickman v. Premera Blue Cross*, 184 Wn.2d at 314; *Martin*
16 *v. Gonzaga University*, 200 Wn.App. 332, 402 P.3d 294, (Div. 3 2017). Finally, any “overriding
17 justification” offered by the employer **must** supersede the unlawful reason for the firing in
18 importance under the law or under public policy in order to succeed as an overriding
19 justification. *Martin v. Gonzaga University*, 200 Wn.App. 332, 402 P.3d 294, (Div. 3 2017).
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PLAINTIFF’S RESPONSE IN OPPOSITION
TO DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT 13


BARDEN & BARDEN

1 There are four common, non-exclusive categories of wrongful discharge claims. *Id.*
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3 These are: (1) instances in which an employee is fired for refusing to commit an illegal act; (2)
4 instances in which an employee is fired for performing a public duty or obligation; (3) instances
5 in which an employee is fired for exercising a legal right or privilege; and (4) instances in which
6 an employee is fired in retaliation for reporting employer misconduct (i.e., whistleblowing). *Id.*

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9 1. County Policies Imposed a Public Duty on and Conferred a Legal Right
10 to Mr. Hause to Report Workplace Violence and His Supervisors'
11 Failure to Ensure a Safe Work Environment.

12 Mr. Hause was a public employee providing critical public services for the SCSO
13 Forensic Unit. His employment was governed in part by the County's Workplace Violence
14 Prevention Policy. Decl. Archer ¶ 3 Ex. A. The Policy imposed a number of public duties
15 and obligations upon Mr. Hause. *Id.* It also provided Mr. Hause a number of legal rights and
16 privileges. *Id.* For instance,
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21 1. All County employees "shall" report "known or
22 suspected" "[w]orkplace violence, threats of
23 workplace violence, or observations of workplace
24 violence" to their immediate supervisor and Risk
25 Management (*Id.* at Ex. A, Art. VI, § D, Art. VII, § A);
26
27 2. All County employees are "responsible for . . .
28 [c]ommunicating recommendations to improve
29 workplace security and safety to" County
30 supervisors, elected officials, and safety committees
31 (*Id.* at Ex. A, Art. VI, § D); and

1 3. All County employees are entitled to make good faith
2 reports of workplace violence without facing
3 retaliation from the County (*Id.* at Ex. A, Art. XI).

4 Mr. Hause's workplace violence complaint fulfilled his foregoing duties and constitutes
5 an exercise of his protected rights and privileges. The complaint unequivocally stated Mr.
6 Boniecki engaged in workplace violence by throwing a spray bottle across the Forensic Unit
7 and by cursing and shouting at a co-worker. Further, the complaint informed Risk
8 Management that Ms. Boniecki displayed ongoing erratic behavior and that the SCSO
9 supervisors completely failed to do anything to ensure the safety of the workplace. In light of
10 its own Workplace Violence Policy, the County cannot genuinely deny that Mr. Hause's
11 workplace violence complaint (i) fulfilled a public duty and obligation and (ii) constituted an
12 exercise of a legal right and privilege. The County Whistleblower Policy also protected this
13 legal right and privilege, as Mr. Hause was entitled to report Ms. Boniecki and her supervisors'
14 failure to abide County rules (violating the Workplace Violence Policy by throwing a spray
15 bottle and failure to properly report the incident) and creation of an unsafe workplace as this
16 conduct falls within the definition of "improper governmental activity." *Id.* at ¶4 Ex. B.

17 2. Mr. Hause's Workplace Violence Complaint Reported Supervisor
18 Misconduct.

19 With respect to the obligations of supervisors, the County's Workplace Violence
20 Policy provides:
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- 1 1. All County supervisors are subject to the same duties
2 and responsibilities as subordinates with respect to
3 reporting suspected or known workplace violence;
4 (*Id.* at **Ex. A**, Art. II); and
- 5 2. All County supervisors “shall maintain a safe and
6 secure workplace by . . . *implementing practices that*
7 *ensure employee compliance with workplace security*
8 *directives, policies, and procedures [and by r]eporting*
9 *workplace violence incidents . . . [to Risk*
10 *Management].”* (*Id.* at **Ex. A**, Art. VI, § B).

11 It is undisputed that no SCSO supervisors reported Ms. Boniecki’s spray bottle incident to
12 Risk Management like they were required to do by the Workplace Violence Policy, and,
13 further, it is undisputed that the SCSO supervisors failed to protect Forensic Unit employees
14 from Ms. Boniecki’s workplace violence. Mr. Hause’s complaint makes multiple references to
15 the supervisors’ failure to ensure a safe environment, and, indeed, Lt. Thompson construed
16 the complaint as being about how the spray bottle incident was handled by supervisors.

17 3. **Public Policy Clearly Prohibits Retaliating Against Workers for**
18 **Reporting Workplace Violence.**

19 Mr. Hause is also protected from discharge by the clear mandate of public policy that
20 reporters of workplace violence and improper governmental conduct should not be retaliated
21 against. This public policy is established by several statutes, policies, and regulations.

22 First, the County’s own Workplace Violence Policy expressly prohibits retaliation
23 against employees coming forward to report workplace violence. It is absurd for the County
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1 to take the position that it may violate its own policy and retaliate against a reporting employee
2 without fear of liability because public policy does not mandate otherwise. And yet, this is the
3 position the County has taken.
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6 Second, the County's Whistleblower Policy prohibits the SCSO from retaliating
7 against employees for whistleblowing on improper governmental action. SCSO's policy, Art.
8 I. Improper governmental action is defined by the County to include (i) any violation of a law
9 or rule and (ii) any dangerous conduct by any county employee (including Ms. Boniecki and
10 the SCSO's supervisors). *Id.* at **Ex. B** (Att. A). Therefore, it is equally absurd for the County
11 to take the position that it may violate its own policy and retaliate against a whistleblowing
12 employee without fear of liability because public policy does not mandate otherwise. And yet,
13 again, this is the position the County has taken.
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19 Third, Washington is replete with statutes expressing a public policy to protect
20 whistleblowing employees. For instance, RCW 42.41.010 provides: "The purpose of this
21 chapter is to protect local government employees who make good-faith reports to appropriate
22 governmental bodies and to provide remedies for such individuals who are subjected to
23 retaliation for having made such reports [of improper governmental actions]." *Id.*; *see also* RCW
24 42.40.010 (protecting state employees from facing retaliation for whistleblowing and
25 expressing a strong public policy (i) that "employees should be encouraged to
26 disclose . . . improper governmental action" and (ii) to "protect the rights of these
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1 [whistleblowing] employees”). RCW 42.41.010 defines the County as a “local government,”
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3 and the County concedes in its moving papers that its Whistleblower Policy mirrors the
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5 definition of “improper governmental action” in RCW 42.41.010. For the same reasons set
6
7 forth above, Ms. Boniecki and the SCSO supervisors’ conduct qualifies as improper
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9 governmental conduct.

10 The County’s argument that Chapter 42.41 RCW should not be used to establish a clear
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12 public policy in this case should be rejected, as the test for wrongful discharge is whether the
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14 retaliation violated a public policy—*not* whether there is a public policy to allow people to sue
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16 for the retaliation. Likewise, the County’s argument that County policies cannot create a
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18 private right of action should be rejected. Whenever a local government’s (like Spokane
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20 County’s) Whistleblower Policy does *not* provide for exclusive remedies, a plaintiff may bring
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22 a cause of action in superior court for wrongful discharge in contravention of public policy.
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24 *Wilson v. City of Monroe*, 88 Wash. App. 113, 127, 943 P.2d 1134, 1140 (1997); *see also* Decl.
25
26 Cameron **Ex. 6** p.4 *Protection Against Retaliatory Actions* “County employee may seek protection
27
28 under the [Whistleblower policy] *and* pursuant to state law . . .” (emphasis added).

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4. **The SCSO Terminated Mr. Hause Due to His Report and Whistleblowing Activity.**

The Ninth Circuit has held that “although the *McDonnell Douglas* burden shifting
framework is a useful tool to assist at the summary judgment stage . . . nothing compels the

1 parties to invoke the *McDonnell Douglas* presumption.” *McGinest v. GTE Service Corp.*, 360 F.3d
2 1103, 1122 (9th Cir. 2004) (citation and internal quotation marks omitted). Instead, “when
3 responding to a summary judgment motion . . . [the plaintiff] may proceed by using the
4 *McDonnell Douglas* framework, or **alternatively**, may simply **produce direct or circumstantial**
5 **evidence demonstrating that a discriminatory reason more likely than not motivated**
6 **[the employer].”** *Id.* (citation omitted) (emphasis added).
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9 “When the plaintiff offers direct evidence of discriminatory motive, a triable issue as
10 to the actual motivation of the employer is created even if the evidence is not substantial.”
11 *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1221 (9th Cir. 1998); *see also Wallis v. J.R. Simplot*
12 *Co.*, 26 F.3d 885, 889 (9th Cir. 1994) (concluding that on summary judgment, “[t]he requisite
13 degree of proof necessary to establish a prima facie case . . . is minimal and does not even need
14 to rise to the level of a preponderance of the evidence”). *Metoyer v. Chassman*, 504 F.3d 919,
15 931 (9th Cir. 2007).
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18 Here, the *McDonnell Douglas* scheme does not apply because there is direct and
19 circumstantial evidence of the County’s retaliatory intent. This evidence includes, for instance,
20 (i) the County’s commencement of an IA investigation against Mr. Hause **two days** after
21 completing its investigation of Mr. Hause’s complaint; (ii) the County’s inability to articulate
22 with any degree of sincerity which specific statements by Mr. Hause were misleading and
23 false; (iii) the fact that Mr. Hause had a sterling and pristine employment record in the
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PLAINTIFF’S RESPONSE IN OPPOSITION
TO DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT 19


BARDEN & BARDEN

1 Forensic Unit for nearly a decade; (iv) Mr. Hause's supervisors' unprofessional relationship
2 with Ms. Boniecki; (v) the SCSO's complete and utter failure to follow the protocol for
3 investigating a workplace violence complaint; (vi) the SCSO's refusal to interview Mr. Hause
4 about his complaint; and (vii) the SCSO's 20 years' worth of tolerance of Ms. Boniecki's
5 violent and erratic behavior, coupled with its willingness to fire its best Forensic Specialist
6 without a prior warning or lesser disciplinary actions. *See Mekkelsen v. Pub. Utility Dist. No. 1*
7 *for Kittitas Co.*, 189 Wn.2d 516, 526 (Washington Courts have repeatedly emphasized that
8 "plaintiffs may rely on circumstantial, indirect, and inferential evidence to establish
9 discriminatory action"); *McGinest v. GTE Service Corp.*, 360 F.3d 1103 (9th Cir.2004)
10 ("circumstantial and direct evidence should be treated alike"); *Johnson v. D.S.H.S.*, 80
11 Wn.App. 212, 227, 907 P.2d 1223 (1996) (different treatment creates an inference of
12 intent); *Winarto v. Toshiba America Electronics Components, Inc.*, 274 F.3d 1276 (9th Cir. 2001).

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21 **C. THE COUNTY RETALIATED AGAINST MR. HAUSE IN VIOLATION OF THE WLAD.**

22 This cause of action requires an employee to show that (1) he or she engaged in
23 protected activity, (2) the employer took an adverse employment action, and 3) there is a causal
24 link between the activity and the adverse action. *Short v. Battle Ground Sch. Dist.*, 169 Wn.App.
25 188, 205 (2012). In the retaliatory discharge context, Washington law has recognized a cause
26 of action where an employee has an objectively reasonable belief an employer has violated the
27 law. *See, e.g., RCW 49.60.210* (retaliation for discrimination claim); *Kahn v. Salerno*, 90
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PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT 20


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1 Wash.App. 110, 130, 951 P.2d 321 (1998); *Graves v. Department of Game*, 76 Wash.App. 705,
2 712, 887 P.2d 424 (1994). *See also* RCW 42.40.020(5) (state whistleblower statute—**good faith**
3 **belief improper governmental action**); RCW 42.41.040(1) (local whistleblower statute). The
4 employee must also show that retaliation was a substantial factor motivating the adverse
5 employment decision. *Allison v. Hous. Auth. of City of Seattle*, 118 Wash.2d 79, 96 (1991). **The**
6 **employee need not, however, prove that the employer's sole motivation was retaliation.**
7 *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wash.2d 46, 70 (1991); *Burchfiel v. Boeing Corp.*,
8 149 Wn.App. 468, 205 P.3d 145, (Div. 3 2009)(emphasis added).
9

10 Here, Mr. Hause engaged in a protected activity (reporting government misconduct;
11 pervasive workplace violence; and his supervisors' refusal to take his safety concerns seriously
12 because he was a male); his civil rights were violated through an adverse employment action
13 (terminated because he reported government misconduct and workplace violence); and there
14 was more than a causal link between his reporting and his termination by the County—the
15 County put it in writing that he was terminated because he reported misconduct and workplace
16 violence. Mr. Hause has provided sufficient evidence to show that County's proffered reasons
17 for termination are pretextual. The Defendant's motion for summary judgment should be
18 denied.
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20 **D. THE COUNTY VIOLATED MR. HAUSE'S COLLECTIVE BARGAINING RIGHTS.**
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1 RCW 41.56.040 mandates that no employer shall interfere with, restrain, coerce, or
2 discriminate against public employees in the “free exercise of their right to organize and
3 designate representatives of their own choosing.” The purpose of this statute is to “promote
4 the continued improvement of the relationship between public employers and their employees
5 by providing a uniform basis for implementing the right of public employees to join labor
6 organizations of their own choosing **and** to be represented by such organizations in matters
7 concerning their employment relations with public employers.” *Roxa Irr. Dist. v. State*, 80 Wash.
8 2d 633, 639, 497 P.2d 166, 170 (1972)(Chapter 41.56 RCW should be “liberal[ly] construed to
9 effect its purpose”)(emphasis added). “An employer commits an ‘interference’ violation under
10 RCW 41.56.140(1) if it engages in conduct which can reasonably be perceived by employees
11 as a threat of reprisal or force or a promise of benefit deterring them from pursuit of lawful
12 union activity. A finding of ‘intent’ is not necessary to find a violation.” *Yakima Police*
13 *Patrolmen's Ass'n v. City of Yakima*, 153 Wash. App. 541, 565, 222 P.3d 1217, 1230 (2009).

14 Here, Mr. Hause’s complaint constituted the beginning of the grievance process and
15 rights, which are protected by his CBA. For the reasons set forth herein, the County interfered
16 with and ultimately retaliated against Mr. Hause for engaging in this process. *See Ex. F* p.7.

27 CONCLUSION

28 Based on the foregoing, the Plaintiff respectfully requests that the Court deny
29 Defendant’s Motion for Summary Judgment.
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PLAINTIFF’S RESPONSE IN OPPOSITION
TO DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT 22


BARDEN & BARDEN

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2 Dated this 6th day of January, 2023.
3

_____*s/ Heather C. Barden*_____
Heather C. Barden, WSBA #49316
Barden & Barden
heather@bardenandbarden.net
Phone 509-315-8089
Fax 509-381-2159
905 S. Monroe St.
Spokane, WA 99204
Attorney for Plaintiffs
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PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT 23


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Appendix C

CASE NUMBER
2120323932
SN:153.0 PC:45

FILED
3/2/2023
Timothy W Fitzgerald
Spokane County Clerk

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

CHARLES HAUSE, an individual,

Plaintiff,

v.

SPOKANE COUNTY, a Washington
Municipal Corporation,

Defendant.

No. 21-2-03239-32

**PLAINTIFF'S RESPONSE BRIEF
IN OPPOSITION TO
DEFENDANT'S MOTION FOR
RECONSIDERATION**

INTRODUCTION

On February 9, 2023, the Court correctly declined to summarily dismiss Plaintiff Charles Hause's wrongful termination claim because certain statutes and policies give rise to a clear mandate of public policy. Dkt. Nos. 115, 142. There are only nine reasons to reconsider this final order, and Defendant Spokane County's dissatisfaction is not one of them. But the County takes a second bite at the apple anyway, arguing the Court got the law so wrong that "substantial justice has not been done." In the process, the County re-hashes the same unsuccessful theories that it asserted before—theories which, at this point, the parties and the Court have spent hundreds of hours reading and writing about.

PLAINTIFF'S RESPONSE BRIEF IN
OPPOSITION TO DEFENDANT'S MOTION FOR
RECONSIDERATION - 1


BARDEN & BARDEN

1 There is no reason to reconsider paragraph 2 of the order.¹ The order correctly
2 applied the law and was substantially just. There is a clear mandate of public policy to protect
3 employees from being fired for reporting workplace violence and improper governmental
4 conduct. This mandate is expressly recognized in the County's whistleblower and workplace
5 violence policies, as well as in Chapter 42.40 RCW, Chapter 42.41 RCW, judicial opinions,
6 and WISHA. The County agrees "in all likelihood" the whistleblower statutes create a clear
7 mandate of public policy, and less than two months ago, Division I of the Washington Court
8 of Appeals held that WISHA established a clear mandate of public policy prohibiting
9 employers from retaliating against employees for raising health and safety concerns. *Ng-A-*
10 *Qui v. Fluke Corp.*, 2023 WL 195250 (2023).²

11
12 Thus, Mr. Hause respectfully requests that the Court deny the County's Motion. For
13 over 20 years now, the County Sheriff's Office expected its forensic workers, including Mr.
14 Hause, to work with and protect themselves against an aggressive and violent co-worker.
15 And when Mr. Hause--who was indisputably an excellent public servant and forensic
16 specialist--worked up the courage to report the issue, the County fired him. This left him
17 unemployed, on the Brady list, and without a means to provide for his family. The County's
18 morass of legal arguments are neither new nor helpful. They either 1) Rely on irrelevant
19 distinctions, 2) Erroneously applied law; and/or 3) Rely on red herrings designed to distract
20 from the injustice to Mr. Hause.
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25 ¹ For the sake of brevity and clarity, Mr. Hause uses the term "order" throughout this brief
26 to refer exclusively to paragraph 2 of the order.

² See Appendix 1 for a copy of the opinion.

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ARGUMENT³

A trial court's ruling on a CR 59 motion for reconsideration will be left undisturbed on appeal absent a "manifest abuse of discretion." *Sligar v. Odell*, 156 Wn. App. 720, 733 (2010). An abuse of discretion only occurs in those rare instances in which a trial court bases its decision on "untenable," "arbitrary," or "manifestly unreasonable" grounds. *Weyerhaeuser Co. v. Commercial Union Ins.*, 142 Wn.2d 654, 683 (2000). And while it permits courts to reconsider an order that is "contrary to law" or "substantially [un]just," CR 59 is not to be construed as permitting litigants to re-hash their same tired, unsuccessful arguments. *See, e.g., Sligar*, 156 Wn. App. at 734; *Thomas v. Univ. of Wash.*, 154 Wn. App. 1019, 2010 WL 276107, *4 (2010) (unpublished) (non-precedential) (reasoning that motions for reconsideration do "not provide litigants with a 'second bite at the apple'");⁴ *Vaughn v. Vaughn*, 23 Wn. App. 527, 531 (1979); *Eugster v. City of Spokane*, 121 Wn. App. 799 (2004). Indeed, "a change of heart is not a ground for relief under CR 59." *See, e.g., In re Marriage of Bracken*, 157 Wn. App. 1070, 2010 WL 3734057, * 8 (2010) (unpublished) (non-precedential).⁵

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A. COMMON LAW PROHIBITS DISCHARGING AN EMPLOYEE IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY.

³ The Court is well-versed on the facts of this case, as they were briefed extensively by the parties before the order was issued. Mr. Hause herefore, incorporates by reference the statement of facts set forth in his Response Brief in Opposition to the County's Motion for Summary Judgment. Dkt. No. 107.

⁴ See Appendix 2 for a copy of the opinion.

⁵ See Appendix 3 for a copy of the opinion.

1 There are four common, **non-exclusive** categories of wrongful discharge claims.
2 *Martin v. Gonzaga Univ.*, 191 Wn.2d 712, 723 (2018). These are: (1) instances in which an
3 employee is fired for refusing to commit an illegal act; (2) instances in which an employee is
4 fired for performing a public duty or obligation; (3) instances in which an employee is fired
5 for exercising a legal right or privilege; and (4) instances in which an employee is fired in
6 retaliation for reporting employer misconduct (i.e., whistleblowing). *Id.*

8 Even if one of the four, non-exclusive common types of wrongful discharge claims
9 are not applicable, an employer is *still* liable for wrongful discharge whenever (1) the
10 “discharge may have been motivated by reasons that contravene a clear mandate of public
11 policy;” (2) discouraging the conduct in which the employee engaged would jeopardize the
12 public policy; (3) “the public-policy-linked conduct was a significant factor in the decision to
13 discharge;” and (4) there is no overriding justification for the discharge. *Mackey v. Home Depot*
14 *USA, Inc.*, 12 Wn. App. 2d 557, 578-79 (2020); *Martin*, 191 Wn.2d at 723. This is commonly
15 referred to as the “Perritt Test.” In this case, the County illegally discharged Mr. Hause in
16 violation of both, the *Perritt* test and the common categories of wrongful discharge.

18 **B. THE COUNTY VIOLATED THE SECOND, THIRD, AND FOURTH COMMON**
19 **CATEGORIES OF WRONGFUL DISCHARGE.**

20 Mr. Hause was a public employee providing critical public services for the Sheriff’s
21 Office’s Forensic Unit. His employment was governed in part by the County’s Workplace
22 Violence Prevention Policy, which imposed a number of public duties and obligations upon
23 him. *Archer Decl. in Opp. to Def.’s Mot. for Summ. J.*, Ex. A, Dkt. No. 91. It also provided Mr.
24 Hause a number of legal rights and privileges:

- 1 1. County employees “shall” report “known or suspected”
2 “[w]orkplace violence, threats of workplace violence, or
3 observations of workplace violence” to their immediate
4 supervisor and Risk Management;
- 5 2. County employees are “responsible for . . .
6 [c]ommunicating recommendations to improve
7 workplace security and safety to” County supervisors,
8 elected officials, and safety committees; and
- 9 3. County employees are entitled to make good faith
10 reports of workplace violence without facing retaliation
11 from the County.

12 *Id.* The County claims the legal rights and privileges contemplated by this common type of
13 wrongful discharge cannot arise out of policies. *Def.’s Mot. for Reconsideration*, pgs. 7-8. This is
14 incorrect in light of the *Wilson v. City of Monroe* decision discussed in greater detail below. But,
15 even if the County were correct, Mr. Hause would still enjoy these same legal rights,
16 privileges, and obligations under WISHA regulations. *See, e.g.*, WAC 296-800-11010
17 (providing that employees may exercise their rights and privileges under “any method or
18 process adopted for the protection of any employee” without fear of retaliation from or
19 interference by the employee); RCW 49.17.160 (prohibiting retaliation against employees
20 discussing and participating in WISHA safety and health related practices); WAC 296-800-
21 120 (“You [the employee] must play an **active role** in creating a safe and healthy workplace
22 and comply with all applicable health and safety rules” (emphasis added)).

23 Mr. Hause’s workplace violence complaint fulfilled these duties and is an exercise of
24 his protected rights and privileges (see the second common category of wrongful discharge,
25 *Martin*, 191 Wn.2d at 723). The complaint unequivocally stated Trayce Boniecki engaged in
26 workplace violence by throwing a spray bottle across the Forensic Unit and by cursing and
27 shouting at a co-worker. Further, the complaint informed Risk Management that Ms.

1 Boniecki displayed ongoing erratic behavior and that management contributed to the unsafe
2 work environment. *Nowels Decl. in Supp. of Def.'s Mot. for Summ. J.*, Ex. 1, Dkt. No. 81.

3 The County's Whistleblower Policy likewise protected Mr. Hause's right and privilege
4 to file the workplace violence report, as violating the Workplace Violence Prevention Policy
5 by throwing a spray bottle, failing to properly report the workplace violence, and creating an
6 unsafe workplace falls within the policy's definition of "improper governmental activity."
7 *Archer Decl. in Opp. to Def.'s Mot. for Summ. J.*, Ex. B, Dkt. No. 91.⁶ Like the Workplace
8 Violence Prevention Policy, the County's Whistleblower Policy also finds support in
9 WISHA. *See, e.g.*, RCW 49.17.160. The County, therefore, violated the third common
10 category of wrongful discharge, as well as the second. *Martin*, 191 Wn.2d at 723.

11 Finally, the fourth common category of wrongful discharge was also violated. The
12 County's Workplace Violence Prevention Policy provides:
13

- 14
- 15 1. All County supervisors are subject to the same duties
16 and responsibilities as subordinates with respect to
17 reporting suspected or known workplace violence; and
 - 18 2. All County supervisors "shall maintain a safe and secure
19 workplace by . . . implementing practices that ensure
20 employee compliance with workplace security directives,
policies, and procedures [and by r]eporting workplace
violence incidents . . . [to Risk Management]."

21 *Archer Decl. in Opp. to Def.'s Mot. for Summ. J.*, Ex. A, Dkt. No. 91. Here again, WISHA statutes
22 and regulations support these supervisor obligations. *See, e.g.*, WAC 296-800-11010(4) ("You
23

24 ⁶ The County's Whistleblower Policy defines "[i]mproper governmental action as "any action
25 by a Spokane County officer or employer [which would include Ms. Boniecki]" that "is in
26 violation of . . . a local law or rule." *Archer Decl. in Opp. to Def.'s Mot. for Summ. J.*, Ex B, Dkt.
No. 91.

1 must do everything reasonably necessary to protect the life and safety of your employees”);
2 *Id.* at (3) (“You must provide and use . . . work practices, methods, processes, and means that
3 are reasonably adequate to make your workplace safe”).

4 It is undisputed that the Sheriff’s Office’s management failed to report Ms. Boniecki’s
5 spray bottle incident to Risk Management like as required by the Workplace Violence
6 Prevention Policy, and, further, it is undisputed that the Sheriff’s Office’s management failed
7 to protect Forensic Unit employees from Ms. Boniecki’s workplace violence. Mr. Hause’s
8 workplace violence complaint makes multiple references to management’s failure to ensure
9 a safe environment, and, indeed, the investigator of Mr. Hause’s complaint construed it as
10 being about how the spray bottle incident was handled by management. *Barden Decl. in Opp.*
11 *to Def.’s Mot. for Summ. J.*, Ex. A, Thompson Dep. 35:8-22, Dkt. No. 87.
12

13
14 **C. THE COUNTY VIOLATED A CLEAR MANDATE OF PUBLIC POLICY PROHIBITING**
15 **THE DISCHARGE OF EMPLOYEES FOR REPORTING WORKPLACE VIOLENCE**
AND IMPROPER GOVERNMENTAL CONDUCT.

16 After reviewing considerable briefing by the parties on the matter, the Court
17 concluded that a clear mandate of public policy exists based, at least in part, “upon the Sheriff
18 Office’s policies prohibiting retaliation for reporting workplace violence and improper
19 governmental conduct as well as the County’s workplace violence and whistleblower
20 policies.” *Letter Ruling*, Dkt. No. 115. This clear mandate of public policy is derived from
21 Chapter 42.41 RCW, Chapter 42.40 RCW, the County’s policies, judicial opinions, and a
22 number of WISHA regulations. Each of these schemes establish an independent basis for
23 concluding a clear mandate of public policy exists, but analyzed together, the existence of a
24 clear mandate is even further crystalized.
25

1
2 i. **Chapter 42.41 RCW and Chapter 42.40 RCW Create a Clear**
3 **Mandate of Public Policy.**

4 With respect to Chapter 42.41 RCW, the County essentially concedes a clear mandate
5 is established. Citing *Keenan v. Allen*, 91 F.3d 1275 (9th Cir. 1996), the County correctly
6 explains that the Ninth Circuit reasoned Chapter 42.41 RCW “in all likelihood” establishes a
7 clear mandate of public policy “encouraging good faith reports of improper governmental
8 action to appropriate governmental bodies.” *Def.’s Mot. for Reconsideration of Partial Denial of*
9 *Summ. J.*, pgs. 8-9 (citing to *Keenan*, 91 F.3d at 1281). This is correct. RCW 42.40.010 provides
10 that the chapter is designed to protect state employees from facing retaliation for
11 whistleblowing and expresses a strong public policy (i) that “employees should be
12 encouraged to disclose . . . improper governmental action” and (ii) that “the rights of these
13 [whistleblowing] employees” should be “protected.” RCW 42.41.010 extends this same
14 policy and statutory scheme to local government employees, such as Mr. Hause:
15
16

17 It is the policy of the legislature that local government employees
18 should be encouraged to disclose, to the extent not expressly
19 prohibited by law, improper governmental actions of local
20 government officials and employees. The purpose of this chapter
21 is to protect local government employees who make good-faith
22 reports to appropriate governmental bodies and to provide
23 remedies for such individuals who are subjected to retaliation for
24 having made such reports.

25 From here, the County incorrectly argues (i) Mr. Hause’s report did not cause his
26 termination and (ii) Mr. Hause did not complain of improper governmental action. *Id.* at pg.
9. The first of these two arguments merely underscores the existence of genuine issues of

1 fact for the jury.⁷ The County's second argument, meanwhile, deliberately overlooks the fact
2 that Ms. Boniecke's temper tantrum was, in and of itself, an "improper governmental action."
3 *See, e.g., Id.* at pg. 9 (mischaracterizing Mr. Hause's "improper governmental action"
4 complaints as being limited to exempt personnel actions such as the investigation into his
5 workplace violence complaint and the internal affairs investigation into Ms. Boniecki). Ms.
6 Boniecki is a government employee, and, by violating the Workplace Violence Prevention
7 Policy, she violated a local rule. *See Barden Decl. in Opp. to Def.'s Mot. for Summ. J., Ex. A, Lt.*
8 *Thompson dep.* 36:18-25, 37:1-25, 38:1-6, Dkt. No. 87 (conceding that Ms. Boniecki violated
9 the Workplace Violence Prevention Policy). This by definition *is* an improper governmental
10 action. *Archer Decl. in Opp. to Def.'s Mot. for Summ. J., Ex. B, Dkt. No. 91.*
11

12 Further, the County's reliance on the phrase "appropriate discipline" completely
13 disregards the underlying facts of the complaint, the context in which the phrase is used, and
14 the several different issues raised in the complaint. The reliance is especially misplaced where,
15 as here, the County deliberately buried its head in the sand and declined to interview the
16 complainant (something that, prior to Mr. Hause, had never happened before). *Archer Decl.*
17 *in Opp. to Def.'s Mot. for Summ. J., Ex. C, Bartel Dep.* 102:25, 103:1-11, Dkt. No. 91. The Court
18 correctly resisted the County's game of "gotcha" and examined the entirety of the complaint,
19 which not only addressed Ms. Boniecki's conduct, but also their supervisors' failure to create
20 a safe work environment, which falls squarely within the definition of "improper
21 governmental conduct" (see analysis in Section B above). *Id.* at Ex. B.
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25 ⁷ Because these factual issues related to causation were thoroughly briefed in the summary
26 judgment opposition materials, Mr. Hause will not reiterate these arguments here. Mr. Hause,
instead, incorporates the facts and arguments by reference.

1 **ii. The County's Policies Create a Clear Mandate of Public Policy.**

2 Here again, the County takes the absurd position that its policies, which are public,
3 cannot be used to establish a clearly defined public policy. This not only defies logic, but
4 contradicts the holding of *Wilson v. City of Monroe*, 88 Wn. App. 113, 127 (1997); *see also Ng-a-*
5 *Qui*, 2023 WL 195250 at *3-4 (holding in part that statutes are not exclusive remedies for
6 employees suffering from retaliation). In *Wilson*, the Court of Appeals held that a wrongful
7 discharge claim may be premised on county policies, so long as the policies do not provide
8 for exclusive remedies. *Id.* The Court based its order on two policies, neither of which
9 provided for exclusive remedies. *See generally Archer Decl.*, Ex. A, Dkt. No. 91; *Id.* at Ex. B,
10 Dkt. No. 91 (“County employee[s] may seek protection under the [Whistleblower policy]
11 and pursuant to state law” (emphasis added)).
12

13
14 Further, the County’s argument that its policies do not apply to the general public is
15 irrelevant. As discussed above, Chapter 42.41 RCW and Chapter 42.40 RCW give rise to
16 clear mandates of public policies, however do not apply to the general public. Not to
17 mention, the County’s Workplace Violence Prevention Program *does* apply to the general
18 public. *Archer Decl. in Opp. to Def.’s Mot. for Summ. J.*, Ex. A, Dkt. No. 91. The Court, therefore,
19 correctly based its conclusion on the County’s policies.
20

21 **iii. WISHA Regulations Create a Clear Mandate of Public Policy.**

22 Finally, WISHA statutes and regulations give rise to a clear mandate of public policy
23 protecting whistleblowing employees from retaliation. RCW 49.17.010, for instance,
24 provides:

25 The legislature finds that personal injuries and illnesses arising
26 out of conditions of employment impose a substantial burden

1 upon employers and employees in terms of lost production, wage
2 loss, medical expenses, and payment of benefits under the
3 industrial insurance act. Therefore, in the public interest for the
4 welfare of the people of the state of Washington and in order to
5 assure, insofar as may reasonably be possible, safe and healthful
6 working conditions for every man and woman working in the
7 state of Washington, the legislature in the exercise of its police
8 power, and in keeping with the mandates of Article II, section 35
9 of the state Constitution, declares its purpose by the provisions
10 of this chapter to create, maintain, continue, and enhance the
11 industrial safety and health program of the state, which program
12 shall equal or exceed the standards prescribed by the
13 Occupational Safety and Health Act of 1970 (Public Law 91-596,
14 84 Stat. 1590).

15 *Id.* (emphasis in original). RCW 49.17.160 prohibits employers from retaliating against
16 employees discussing and participating in safety and health related practices. *See also* WAC
17 296-800-11010 (prohibiting employers from “interfer[ing] with . . . [an employee’s] use of
18 any method or process adopted for the protection of any employee”); WAC 296-800-12005
19 (providing it is the employee’s burden to “[d]o everything reasonably necessary to protect
20 the life and safety of employees”); WAC 296-800-120 (mandating that employees “**must**
21 **play an active role in creating a safe and healthy workplace**” (emphasis added)). The
22 County cannot genuinely argue that its Whistleblower and Workplace Violence **Prevention**
23 **Program** Policies are not intended to establish procedures for ensuring a safe and healthy
24 workplace. Nor can the County argue its Workplace Violence Prevention Program Policy is
25 not based on a statutory and regulatory scheme. *Archer Decl. in Opp. to Def.’s Mot. for*
26 *Reconsideration*, Ex. A. The County’s policy is virtually identical to the policy created for
employers by Washington’s Department of Labor & Industries. L&I issued this policy, of
course, pursuant to its powers under WISHA.

1 Therefore, WISHA statutes and regulations establish yet another basis to support the
2 Court's conclusion that a clear mandate of public policy exists in this case. In fact, as recently
3 as two months ago, Division I of the Washington Court of Appeals held in part that WISHA
4 and, specifically, RCW 49.17.160, created a clear mandate of public policy prohibiting
5 employers from retaliating against employees complaining about workplace safety and health
6 issues. *Ng-A-Qui*, 2023 WL 195250 at *5 ("Thus, his wrongful discharge claim is based on [a
7 clear mandate of] public policy as established by WISHA, which is also the statutory basis
8 for his retaliation claim").

10 **1. Without Any Overriding Justification, the County Terminated Mr.**
11 **Hause Because He Filed the Workplace Violence Complaint.**

12 The Court correctly concluded that the remaining elements of the *Perritt* Test are
13 satisfied in this case. "When a direct relationship holds between the employee's conduct and
14 the public policy, the employer's discharge of the employee for engaging in that conduct
15 inherently implicates the public policy." *Martin*, 200 Wn. App. at 356. Further, being fired
16 for coming forward about government misconduct and workplace violence actions will
17 discourage similar future conduct in other employees. "If employers are allowed to terminate
18 their employees for saving persons from [workplace violence] situations when the employee
19 appears to be the only hope [], then the policy encouraging all citizens to engage in such
20 conduct would be jeopardized." *Gardner v. Loomis Armored Inc.*, 128 Wash. 2d 931, 946 (1996).

22 The causation element in a wrongful discharge claim "is not an all-or-nothing
23 proposition." *Rickman v. Premiera Blue Cross*, 184 Wn.2d 330, 314 (2015). "The employee need
24 not attempt to prove the employer's sole motivation was retaliation." *Wilmot v. Kaiser*
25 *Aluminum & Chem. Corp.*, 118 Wn.2d 46, 70 (1991). "Instead, the employee must produce

1 evidence that the actions in furtherance of public policy were a cause of the firing, and the
2 employee may do so by circumstantial evidence.” *Rickman*, 184 Wn.2d at 314. “This test asks
3 whether the employee’s conduct in furthering a public policy was a substantial factor
4 motivating the employer to discharge the employee.” *Rickman*, 184 Wn.2d at 314. Finally, any
5 “overriding justification” offered by the employer **must** supersede the unlawful reason for
6 the firing in importance under the law or under public policy in order to succeed as an
7 overriding justification. *Martin*, 200 Wn. App. at 359.

9 Here, there is direct and circumstantial evidence of the County’s retaliatory intent: (i)
10 the County commenced an IA investigation against Mr. Hause **two days** after completing its
11 investigation of Mr. Hause’s workplace violence complaint; (ii) the County is, and was, unable
12 to articulate with any degree of credibility or specificity which statements by Mr. Hause were
13 misleading and false; (iii) Mr. Hause had a sterling and pristine employment record in the
14 Forensic Unit for nearly a decade; (iv) key members of the Sheriff’s Office’s management
15 team enjoyed unusually unprofessional relationship with their subordinate Ms. Boniecki (e.g.,
16 eating lunch together in their car and linking Ms. Boniecki’s “selfies” on Facebook during IA
17 investigations); (v) the County failed to follow the protocol for investigating a workplace
18 violence complaint; (vi) the County refused to interview Mr. Hause about his workplace
19 violence complaint; and, among other things, (vii) the County’s 20 years’ worth of tolerance
20 of Ms. Boniecki’s violent and erratic behavior, coupled with its willingness to fire its best
21 Forensic Specialist without a prior warning or lesser disciplinary actions. *See Mekeelsen v. Pub.*
22 *Utility Dist. No. 1 for Kittitas Co.*, 189 Wn.2d 516, 526 (Washington Courts have repeatedly
23 emphasized that “plaintiffs may rely on circumstantial, indirect, and inferential evidence to
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1 establish discriminatory action”); *McGinest v. GTE Service Corp.*, 360 F.3d 1103 (9th Cir.2004)
2 (“circumstantial and direct evidence should be treated alike”).

3 The County has not, and cannot, articulate an overriding justification that supersedes
4 its violation of the clear public policy. The e-mails sent by Mr. Hause to his supervisors about
5 Ms. Boniecki are innocuous, barely critical (if at all), and indisputably legitimate. Further, the
6 County’s position that Mr. Hause’s termination was justified because he hated Ms. Boniecki
7 is disingenuous, at best. Ms. Boniecki placed a sign on her desk referring to Mr. Hause as an
8 “irrelevant little bitch.” *Hause Decl. in Opp. to Def.’s Mot. for Summ. J.*, Ex. AA, Dkt. No. 90.
9 Their supervisor admitted she did not have any issue with the sign being in the workplace,
10 even though Mr. Hause reasonably concluded it was directed at him. No discipline was ever
11 taken against Ms. Boniecki. And yet, the County asks the Court to believe it was justified in
12 firing Mr. Hause because he, a consummate professional without any blemishes on his
13 employment record, sent private texts messages to a personal friend confessing he was
14 worried about and did not like Ms. Boniecki’s behavior. Not to mention, Mr. Hause’s
15 communications with his friends, John Schlosser and Lori Preuninger (who did not even
16 work in the Sheriff’s Office at the time) were not grounds for his termination. *Nowels Decl. in*
17 *Supp. of Spoliation Mot.*, Exs. 7, 9. According to the County’s records, these communications
18 only warranted a brief suspension without pay. *Id.*

19 Moreover, the record before the Court on summary judgment clearly established that
20 Mr. Hause had no track record of complaining about Ms. Boniecki to management. Certainly,
21 nothing in the record suggests Mr. Hause ever treated Ms. Boniecki in an outwardly or
22 passively aggressive manner. In fact, the record shows that virtually all of Ms. Boniecki’s
23

1 other coworkers, except Mr. Hause, frequently complained about her workplace behavior.
2 *See, e.g., Barden Decl.*, Ex. D, Dkt. No. 87. Unlike Mr. Hause, these coworkers were not fired,
3 as they never took their complaints outside the Sheriff's Office. Only Mr. Hause had the
4 courage to seek help from outside the Sheriff's Office, and for this he was fired.

5
6 Finally, the County's claim that Mr. Hause should have provided a written complaint
7 to the Sheriff does not justify its decision to terminate Mr. Hause. Steve Bartel, the director
8 of the County's Risk Management Office testified that Mr. Hause delivered the complaint to
9 the correct place. *Archer Decl. in Opp. to Def.'s Mot. for Summ. J.*, Ex. C, Bartel dep. 97:22-25,
10 Dkt. No. 91 ("**Q. Okay. So understanding that, then, do you think Mr. Hause delivered**
11 **the complaint to the proper place? A. Yes**" (emphasis added)). Mr. Hause's decision to
12 take the complaint outside of the Sheriff's Office was logical and justified, as he explained
13 the problem with Ms. Boniecki was due, in part to the supervisors' failure to ensure a safe
14 work environment. *Id.*; *Novels Decl. in Supp. of Def.'s Mot. for Summ. J.*, Ex. 1, Dkt. No. 81.
15 Moreover, even if Mr. Bartel is incorrect and the complaint should have gone to the Sheriff's
16 Office, that is precisely where the complaint landed and was investigated. *Barden Decl. in Opp.*
17 *to Def.'s Summ. J.*, Exs. A, G, Dkt. No. 87. There is no basis in law or fact for the County's
18 contention that Mr. Hause should lose his protection as a whistleblower because he gave the
19 complaint to the Risk Management Office. This is a trivial, irrelevant argument that serves
20 only to obfuscate Mr. Hause's illegal termination.
21
22

23 CONCLUSION

24 Accordingly, the Court should deny the County's Motion for Reconsideration.
25
26

1 RESPECTFULLY SUBMITTED this 2nd day of March, 2023.

2 BARDEN & BARDEN PLLC

3
4 By: Heather C. Barden

5 Heather C. Barden, WSBA #49316

6 Heather@bardenandbarden.net

7 Phone 509-315-8089

8 Fax 509-381-2159

9 905 S. Monroe St.

10 Spokane, WA 99203

11 Attorneys for Plaintiff

12 RIVERSIDE LAW GROUP, PLLC

13 By: Max K. Archer

14 Max K. Archer, WSBA #54081

15 905 W. Riverside Ave., Ste. 404

16 Spokane, WA 99201

17 Phone: 509-504-8714

18 mka@riverside-law.com

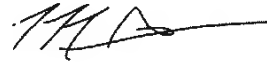
19 Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, Max K. Archer, certify that on March 2, 2023, I caused to be served a true and
3 correct copy of the foregoing via the method indicated below and addressed to the following:

Counsel for Defendant John R. Nicholson Jackson & Nicholson, P.S. 900 SW 16 th Street, Suite 215 Renton, WA 98057 Phone: (206) 582-6001 Email: John@jnseattle.com jenny@jnseattle.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery – Messenger Service <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax <input checked="" type="checkbox"/> E-Mail
--	--

10 I certify under penalty of perjury under the laws of the state of Washington that the
11 foregoing is true and correct.

12
13 

14 Max K. Archer

JACKSON & NICHOLSON, P.S.

September 26, 2024 - 10:01 AM

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