

THE HONORABLE EDWARD F. SHEA

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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 BRADLEY N. THOMA, a single
12 person,
13 Plaintiff,

14 v.

15 CITY OF SPOKANE, a municipal
16 corporation in and for the State of
17 Washington; and ANNE E.
18 KIRKPATRICK, a single person,
19 Defendants.

)
) NO. CV-12-156-EFS
)
) **PLAINTIFF'S LR 56.1**
) **STATEMENT OF MATERIAL**
) **FACTS**
)

20 Plaintiff Bradley N. Thoma, by and through his attorneys of record, Dunn
21 & Black, P.S., hereby submits Plaintiff's Statement of Material Facts pursuant to
22 LR 56.1.
23
24

25 PLAINTIFF'S LR 56.1 STATEMENT
26 OF MATERIAL FACTS - 1

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1 1. In October 1989, Defendant City of Spokane (“the City”) hired
2 Bradley Thoma as a Patrolman for the Spokane Police Department (“SPD”). See
3 Declaration of Susan C. Nelson (“Nelson Decl.”), **Ex. A.**

4 2. On 1/2/1994, the City promoted Thoma to Police Officer 1st Class
5 (now referred to as Senior Patrolman). See Nelson Decl., **Ex. B.**

6 3. On 2/26/1996, the City promoted Thoma to Detective. See Nelson
7 Decl., **Ex. C.**

8 4. By July 1998, the City had promoted Thoma (“Sgt. Thoma”) to
9 Police Sergeant. See Nelson Decl., **Ex. D.**

10 5. Throughout his career with SPD, Sgt. Thoma routinely received
11 excellent performance reviews. See Nelson Decl., **Ex. E.**

12 6. Sgt. Thoma’s July 2007 review described him as “*one of the*
13 *smartest, most able, most tactically and technically sound officers, let alone*
14 *supervisors on (sic) this department.*” Id. at Bates COS000927.

15 7. Prior to joining the SPD, Sgt. Thoma had been a social drinker. See
16 Nelson Decl., **Ex. F** at Bates COS000665. Sgt. Thoma’s drinking history
17 eventually progressed to the point that he became an alcoholic suffering from the
18 disease of alcoholism. See Nelson Decl., **Ex. G.**

1 8. On the evening of 9/23/2009, while off duty, Sgt. Thoma had been
2 consuming alcohol. Afterwards, while driving his private vehicle and
3 approaching a stop light, Sgt. Thoma was involved in a non-injury, low impact,
4 rear end contact with another vehicle. See Nelson Decl., **Exs. H and L.**

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6 9. As a result, he was arrested and charged with driving under the
7 influence and failure to remain at the scene of an accident. See Nelson Decl.,
8 **Ex. I.**

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10 10. The next day, on 9/24/2009, the City placed its employee, Sgt.
11 Thoma, on paid administrative leave and initiated an Internal Affairs
12 Investigation. See Nelson Decl., **Ex. J.**

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14 11. After the 9/23/2009 incident, Sgt. Thoma acknowledged his need for
15 treatment for his alcoholism and petitioned the court for deferred prosecution to
16 allow him to receive the medical help he needed. See Nelson Decl., **Ex. K.**

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18 12. On 10/9/2009, Sgt. Thoma was medically evaluated and diagnosed
19 by Hutson Stolz, BA CDP at the Colonial Clinic. The diagnosis was Alcohol
20 Dependence 303.90, as recognized in the Diagnostic and Statistical Manual of
21 Mental Disorders (DSM-IV). See Nelson Decl., **Ex. G.**

22
23 13. During the SPD Internal Affairs Investigation, Sgt. Thoma, via his
24 Guild attorney, Chris Vick, on 11/9/2009, advised Defendants that “*Sgt. Thoma...*”

1 was evaluated and determined to have an alcohol problem. He went in a ... not
2 an easy ten day program but a two year program.” See Nelson Decl., **Ex. L**, at
3 Bates COS000099.

4 14. Also during Sgt. Thoma’s 11/9/2009 Internal Affairs interview,
5 Defendant City’s representative, Lieutenant Craig Meidl, acknowledged the City
6 was “looking at an accommodation issue [so] it seems to me that until such time
7 as they revoke the [driving] license there’s not an issue....” Id. at Bates
8 COS000103.
9

10 15. On 11/13/2009, Sgt. Thoma entered into a deferred prosecution
11 agreement in Spokane County District Court and agreed to complete an “*Intensive*
12 *Out-Patient Program.*” See Nelson Decl., **Ex. M**.
13

14 16. Thereafter, Sgt. Thoma, pursuant to Washington law, was required to
15 “apply for an ignition interlock driver’s license [“IIDL”] and drive only a motor
16 vehicle equipped with a functioning ignition interlock.” Id. at Bates COS000059.
17

18 17. The IIDL requirement does not apply to work vehicles owned by an
19 employer. RCW 46.20.720(3).
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21 18. On 12/9/2009, after the SPD Internal Affairs concluded its
22 investigation, the then City Police Chief, Defendant Anne E. Kirkpatrick
23 (“Kirkpatrick”), provided Sgt. Thoma with a “*Loudermill Notice of Intent to*
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1 *Terminate*” letter. See Nelson Decl., **Ex. N**. In that letter, Defendant Kirkpatrick
2 acknowledged that Sgt. Thoma’s “*deferred prosecution is premised on the fact*
3 *that you [Sgt. Thoma] require treatment for alcoholism.*” Id. at Bates
4 COS000028.

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6 19. On 12/14/2009, via fax, Dr. Mark Hart notified Defendants
7 Kirkpatrick and the City that he had previously examined Sgt. Thoma and
8 diagnosed him with the disability of alcoholism. See Nelson Decl., **Ex. O**.

9
10 20. On 12/17/2009, a Loudermill hearing was conducted and Sgt. Thoma
11 requested that Defendants Kirkpatrick and the City agree to a reasonable
12 accommodation of his alcoholism disability. See Nelson Decl., **Ex. P**, at Bates
13 COS000018.

14
15 21. During the 12/17/2009 Loudermill hearing, Defendant Kirkpatrick
16 acknowledged her perception that Sgt. Thoma suffered from the disease of
17 alcoholism. “*But as you learn more about your disease you will find that one of*
18 *the treatment statements is that alcoholism is cunning....*” See Nelson Decl.,
19 **Ex. Q** at Bates COS0001560.

20
21 22. Prior to Sgt. Thoma’s Loudermill hearing, Defendant Kirkpatrick on
22 12/9/2009 in the Loudermill Notice of Intent to Terminate Letter, acknowledged
23 two possible accommodations that would allow Sgt. Thoma to continue driving a
24

1 patrol car: *“The first is to equip your [Sgt. Thoma’s] police vehicle with an*
2 *interlock device, and the second is for me [Defendant Kirkpatrick] to sign a*
3 *waiver allowing you to drive a police vehicle without an interlock device.”* See
4 Nelson Decl., **Ex. N** at Bates COS000029.

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6 23. The Defendants, at all times material hereto, were aware other law
7 enforcement agencies in Washington have signed waivers for the IIDL
8 requirement allowing officers suffering from alcoholism and in treatment to drive
9 police/patrol vehicles without an interlock device. See Nelson Decl., **Ex. R**.

10
11 24. Defendants Kirkpatrick and/or the City previously accommodated
12 other SPD officers arrested and charged with DUIs by reassigning them to non-
13 patrol duties. See Nelson Decl., **Ex. S**.

14
15 25. One day after the Loudermill hearing, on 12/18/2009, Defendants
16 City and Kirkpatrick presented Sgt. Thoma with a release offering to place him
17 on “laid off” status for two years until the IIDL requirement expired. This was to
18 be in exchange for Sgt. Thoma’s agreement to waive all civil claims. The offer
19 contained no guarantee that after the two-year period that Sgt. Thoma would
20 actually be reinstated with full seniority. See Nelson Decl., **Ex. T**.

21
22 26. When Sgt. Thoma requested an opportunity to consult with a civil
23 attorney regarding the waiver of claims, Defendant Kirkpatrick immediately
24

1 placed Sgt. Thoma on “layoff status” and threatened that he would be terminated
2 “effective 3pm Monday [12/21/2009]”. See Nelson Decl., **Ex. P**, at
3 Bates COS000019.

4 27. On 12/21/2009, four days before Christmas, Defendants Kirkpatrick
5 and the City followed through with their threats and terminated Sgt. Thoma’s
6 employment with the SPD. See ECF No. 005, ¶ 29.

8 28. On 12/30/2009, Defendant Kirkpatrick provided Sgt. Thoma with a
9 Termination of Employment Letter in which Sgt. Thoma’s requested
10 accommodation for his disability of alcoholism was acknowledged. See Nelson
11 Decl., **Ex. P**, at Bates COS000018.

13 29. In her Termination of Employment Letter to Sgt. Thoma, Defendant
14 Kirkpatrick acknowledged that “*In evaluating your employment status, I have*
15 *assumed that you do suffer from alcoholism and that such alcoholism is a*
16 *disability.*” See Nelson Decl., **Ex. P**, at Bates COS000018.

18 30. In Sgt. Thoma’s 12/30/2009 Termination of Employment Letter,
19 Defendant Kirkpatrick acknowledged that the requested accommodations had
20 been evaluated but rejected as unacceptable and unreasonable. See Nelson Decl.,
21 **Ex. P**.

1 31. In the 12/30/2009 Termination of Employment Letter, Defendant
2 Kirkpatrick under the heading “Layoff Accommodation Rejected” concluded that
3 “*Since both possible accommodations that would allow you [Sgt. Thoma] to drive*
4 *a police vehicle with your [Sgt. Thoma’s] IIDL are unreasonable, the City offered*
5 *you an alternative accommodation at the time of your Loudermill Hearing.*
6 *Instead of terminating your employment, the City offered to place you on layoff*
7 *status.” See Nelson Decl., Ex. P.*

9 32. Sgt. Thoma filed the present lawsuit on 2/28/2012. ECF No. 4.

10 33. In the Release offered to Sgt. Thoma on 12/18/2009, executed by
11 Defendant Kirkpatrick on 12/17/2009, Defendants did not offer to place Sgt.
12 Thoma on “*lay off status (rather than termination) until his license to drive was*
13 *unencumbered... guaranteeing him the right to immediately return to a*
14 *commissioned status following the successful completion of his deferred*
15 *prosecution requirements...” as pled in Defendants’ Answer, ECF No. 5, ¶22,
16 (emphasis added).*

17 34. Rather, Defendants 12/18/2009 Release offered to Sgt. Thoma
18 simply stated “*Thoma will be eligible to return to a commissioned position in the*
19 *rank of Detective upon completion of his deferred prosecution requirements.”*
20 *See Nelson Decl., Ex. T.*

1 35. In their Answer, Defendants specifically denied that they
2 “‘intentionally ignored’ Plaintiff’s claimed disability of alcoholism.” ECF
3 No. 5, ¶ 25.

4 36. In their 12/9/2009 Loudermill Notice of Intent to Terminate Letter,
5 Defendants specifically stated Sgt. Thoma was to be terminated because
6 Defendant Kirkpatrick found that Sgt. Thoma was not “‘qualified for continued
7 employment as a result of the interlock device requirement;” accordingly she did
8 not “‘need to reach the issue of appropriate discipline....” See Nelson Decl.,
9
10
11 **Ex. N.**

12 DATED this 4th day of February, 2013.

13 DUNN & BLACK, P.S.

14 s/ SUSAN C. NELSON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send notification of such filings to the following:

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