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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA, a single
person,

Plaintiff,

vs.

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

Defendants.

Case No. CV-12-156-EFS

DEFENDANTS' STATEMENT
OF MATERIAL FACTS
PURSUANT TO LR 56.1

NOTE FOR HEARING:
January 14, 2014
Without Oral Argument

COME NOW Defendants, by and through their undersigned counsel, and
hereby submit this Statement of Material Facts pursuant to LR 56.1(a) as follows:

- 1 1. Plaintiff, Bradley Thoma, began working for the City of Spokane Police
2 Department (“SPD”) on October 1, 1989. *Declaration of Sarah S. Mack*
(hereinafter “*Mack Dec.*”), **Ex. A.**
- 3 2. Throughout his years with the SPD, Plaintiff received positive
4 evaluations. *Mack Dec.*, **Ex. B.**
- 5 3. During his time at SPD, Plaintiff received four Letters of Reprimand,
6 dated November 8, 1989, May 23, 2005, June 29, 2007, and November
7 23, 2009, respectively. Plaintiff received a Suspension on February 20,
8 1992. *Mack Dec.* at **Exs. C and D.** None of this disciplinary action
9 appears to be alcohol-related. Of this discipline, only one of the Letters
10 of Reprimand was issued by former Police Chief Anne Kirkpatrick.
11 *Mack Dec.*, **Ex. C.**
- 12 4. According to Plaintiff, there have never been any occasions when he has
13 been unable to perform his job duties as a police officer because of his
14 alcohol consumption. *Mack Dec.*, **Ex. E at 43:16-19.**
- 15 5. According to Plaintiff, he was never intoxicated at work while he
16 worked for the Spokane Police Department. *Mack Dec.*, **Ex. E at 43:8-**
17 **15.**
- 18 6. According to Plaintiff, his drinking impacted his life by causing him to
19 drink with friends instead of going to the gym, and by causing him to
20 spend less time with his daughter. *Mack Dec.*, **Ex. E at 44:13-22.**
- 21 7. According to Plaintiff, his drinking did not affect his ability to go to
22 work. *Mack Dec.*, **Ex. E at 45:16-18.**
- 23 8. On September 23, 2009, Plaintiff was off duty and golfing with some
24 friends. *Mack Dec.*, **Ex. F at p. 4 and Ex. H at p. 4.**
- 25 9. During the golf game, Plaintiff consumed a significant amount of
alcohol before getting into his personal vehicle and leaving. *Mack Dec.*,
Ex. F at p.4 and Ex. H at pp. 4-5.

1 10.While approaching a stop light, Plaintiff failed to stop, hitting the
2 vehicle in front of him. Instead of exiting his vehicle to ascertain any
3 damage to the vehicles or any injury to the occupants of the other
4 vehicle, Plaintiff drove away from the scene of the accident. *Mack*
Dec., **Ex. F. at p. 2; Ex. G at p. 1; and Ex. H at pp. 5-8.**

5 11.The driver of the other vehicle, Sherry Prickett, initially followed
6 Plaintiff to confront him. However, she observed what she believed
7 was Plaintiff's attempts to elude her, which she also felt was unsafe, and
8 was ready to abandon her pursuit. She pulled into the parking lot of a
9 local grocery store to speak to another witness of the accident, and
found Plaintiff in the same parking lot. *Mack Dec.*, **Ex. F at pp.2-3 and**
Ex. G at 1-3.

10 12.Law enforcement arrived and ultimately arrested Plaintiff for Driving
11 Under the Influence ("DUI"). *Mack Dec.*, **Ex. F at p. 3 and Ex. H at**
pp. 16-18.

12 13.As is the typical practice of the SPD, Plaintiff was placed on paid
13 administrative leave on September 24, 2009, while the Department
14 internally investigated the incident to determine if any policies or
15 procedures had been violated, and whether any disciplinary action was
warranted. *Mack Dec.*, **Ex. W.**

16 14.In the meantime, Plaintiff was prosecuted on his criminal charges.
17 *Mack Dec.*, **Ex. I.**

18 15.As part of the criminal proceedings, Plaintiff requested a deferred
19 prosecution, which required him to allege that he suffered from
20 alcoholism. *Mack Dec.*, **Ex. J.**

21 16.On October 9, 2009, Plaintiff was evaluated and diagnosed with
22 Alcohol Dependence by Hutson Stolz, BA CDP, at the Colonial Clinic.
ECF No. 19, Ex. G.

23 17.On November 9, 2009, during Plaintiff's internal employment
24 investigation, Plaintiff's Guild representative informed the Department,
25

1 for the first time, that Plaintiff suffered from alcoholism. *Mack Dec.*,
2 **Ex. E at 47:14-19 and Ex. H at p. 19.**

3 18.Plaintiff does not know whether his employer had any knowledge that
4 he had an alcohol problem prior to that date. **Ex. E at 47:20-22.**

5 19.Prior to Plaintiff's arrest for DUI, there is no record in Plaintiff's
6 personnel, civil service, or medical files of any report that Plaintiff had
7 any issue with alcohol abuse. *Declaration of Erin A. Jacobson* at ¶ 2.

8 20.Former Chief Anne Kirkpatrick learned for the first time after Plaintiff's
9 arrest that he was alleging he was an alcoholic, and did not believe at
10 the time that Plaintiff was actually suffering from alcoholism. Her
11 opinion was based on his functional performance as a police officer.
12 *Mack Dec.*, **Ex. K at 70:25-73:14.**

13 21.On November 13, 2009, the Spokane County District Court entered an
14 Order deferring prosecution of Plaintiff. *Mack Dec.*, **Ex. J.**

15 22.As part of the deferred prosecution, Plaintiff was required to obtain a
16 restricted driver's license, requiring that he drive only motor vehicles
17 equipped with an Ignition Interlock Device ("IID"). *Id.*

18 23.At the time of the November 13, 2009, Order deferring prosecution,
19 Washington State law allowed, but did not require, employers to issue a
20 "waiver" (referred to by statute as a "declaration") of the IID
21 requirement on employer-owned vehicles used during working hours.
22 2008 Wa. ALS 282, 2008 Wa. Ch. 282, 2007 Wa. HB 3254.

23 24.On December 9, 2009, Chief Kirkpatrick issued a *Loudermill* Notice of
24 Intent to Terminate to Plaintiff. In that letter, Chief Kirkpatrick
25 explained to Plaintiff that driving was required as an essential function
of his job, that she believed he was unable to perform the essential
functions of his job because he was required to maintain an IID on any
vehicle he drove, and that it was not reasonable to place an IID on a
police vehicle. Chief Kirkpatrick further explained that she did not
believe it was reasonable for her to waive the IID requirement. As a

1 result, she notified Plaintiff that she intended to terminate his
2 employment due to his inability to perform the essential elements of his
3 job. *Mack Dec.*, **Ex. X**.

4 25. On December 14, 2009, Dr. Mark Hart faxed a letter to Defendants
5 stating that he had diagnosed Plaintiff with alcoholism. **ECF No. 19**
6 *Nelson Dec.*, **Ex. O**.

7 26. Plaintiff participated in a *Loudermill* hearing on December 17, 2009.
8 During the hearing, Chief Kirkpatrick offered to put Plaintiff in non-
9 commissioned layoff status for two years, the time period during which
10 his IID requirement was in place, and then he could return as a police
11 officer at the end of those two years. *Mack Dec.*, **Ex. L at p.13**. Chief
12 Kirkpatrick further informed him that being placed in such status would
13 allow him to be placed at the top of the Civil Service list for other jobs
14 for which he may be qualified at the City during those two years. *Id.*
15 Chief Kirkpatrick also stated that she was not willing to sign a waiver
16 allowing him to drive a police vehicle without an IID. *Id.*

17 27. Chief Kirkpatrick had never received a request for accommodations
18 from any officer for the alleged disability of alcoholism. *Declaration of*
19 *Anne E. Kirkpatrick* at ¶ 2.

20 28. Chief Kirkpatrick had never received a request from any officer, other
21 than Plaintiff, seeking a waiver for an IID. *Declaration of Anne E.*
22 *Kirkpatrick* at ¶ 3. To the City's knowledge, no Spokane police officer
23 had ever requested a waiver for an IID prior to Mr. Thoma. *Declaration*
24 *of Erin A. Jacobson* at ¶ 3.

25 29. On December 18, 2009, Chief Kirkpatrick again reiterated her offer to
place Plaintiff in layoff status for two years until the IID requirement of
his deferred prosecution had been completed. After the requirement
was completed, Plaintiff would be eligible to return as a fully-
commissioned officer to the Department. However, he would return as
a Detective, rather than as a Sergeant, as discipline for his conduct
leading to the DUI/Hit and Run criminal charges. *Mack Dec.*, **Ex. Y**.

1 30. Defendant Kirkpatrick provided Plaintiff with the opportunity to consult
2 with his Guild representatives and a civil attorney. *Id.*

3 31. Plaintiff ultimately rejected the Departments' offer. *Id.*

4 32. On December 30, 2009, Chief Kirkpatrick issued a Termination Letter
5 to Plaintiff. *Id.*

6 33. That same day, a Grievance was filed on behalf of Plaintiff by Ernie
7 Wuthrich, President of the Spokane Police Guild. *Mack Dec.*, **Ex. M.**

8 34. In the meantime, on December 11, 2009, Plaintiff filed a Complaint
9 with the Human Rights Commission. *See Complaint at Appendix C.*

10 35. On October 18, 2010, the Spokane Police Guild filed an Unfair Labor
11 Practice Claim against the Department. *Mack Dec.*, **Ex. N at p. 1.**

12 36. Around January of 2011, the Department became aware of a change in
13 the law reducing driving restrictions for DUI deferred sentences from
14 two years to one year. *Mack Dec.*, **Ex. O.**

15 37. On January 5, 2011, Erin Jacobson, attorney for the City of Spokane,
16 met with Christopher Vick, an attorney representing the Spokane Police
17 Guild, to discuss the potential reinstatement of Mr. Thoma. *Mack Dec.*,
Ex. P at p. 1.

18 38. On January 5, 2011, Lieutenant Meidl communicated with Mr. Thoma
19 over the phone, during which, as Mr. Thoma asserts, a settlement
20 "agreement" was read to him. *Mack Dec.*, **Ex. E at 76:21-24;**
21 *Complaint at ¶ 32.* This "agreement" was apparently different than
22 what was subsequently presented to him in writing. *Complaint at ¶ 32.*

23 39. The settlement agreement read to Plaintiff over the phone was between
24 the City of Spokane and the Guild. *Declaration of then-Lieutenant*
25 *Craig Meidl at ¶ ¶ 2 and 3.* The agreement included the language
"Between the City of Spokane and the Spokane Police Guild," and "The
City of Spokane (City) and the Spokane Police Guild (Guild) agree to

1 the following terms” *Mack Dec.*, **Ex. Q** and *Meidl Dec.*, **Ex. B**.
2 The agreement contains signature lines for the Police chief and the
3 president of the Guild but no signature line for Mr. Thoma. *Id.* The
4 Guild did not sign the agreement. *Id.*

40.Mr. Thoma asserts that he verbally agreed with this settlement
5 agreement. *Mack Dec.*, **Ex. E at 77:8-17**; *Complaint* at ¶ 32.

6 41.On January 6, 2011, assistant City attorney Erin Jacobson sent Guild
7 attorney Christopher Vick a letter listing terms the City would agree to
8 in exchange for the Guild withdrawing its pending grievance related to
9 Mr. Thoma. *Mack Dec.*, **Ex. P**. This letter is signed by Erin Jacobson
and requests that Mr. Vick sign as well, and then return a copy. *Id.*

10 42.Also on January 6, 2011, a letter addressed to Mr. Thoma was drafted
11 and signed by Chief Kirkpatrick, which memorialized her decision at
12 the time to reinstate Mr. Thoma. *Mack Dec.*, **Ex. R**. This letter was
13 never received or signed by Mr. Thoma. *See Mack Dec.*, **Ex. E at**
76:21-24; **Ex. R at p. 4**.

14 43.On January 13, 2011, Guild attorney Vick wrote to assistant City
15 attorney Jacobson describing the history of events so far from his
16 perspective: Ms. Jacobson had communicated to Mr. Vick that Chief
17 Kirkpatrick “intended” to reinstate Mr. Thoma; Ms. Jacobson sent Mr.
18 Vick a January 6, 2011, letter offering settlement, which Mr. Vick never
19 signed or accepted. *Mack Dec.*, **Ex. S**. Mr. Vick then indicated that he
would not agree to the proposal without a provision allowing Mr.
Thoma to grieve the one year he was without pay. *Id.*

20 44.On July 7, 2011, Human Rights Investigator Kim Pierce met with
21 Assistant City Attorney Erin Jacobson and encouraged the City to
22 consider settlement. Ms. Pierce indicated that based on what she had
completed in her investigation to that point, it would be in the City’s
best interest to settle. *Declaration of Erin A. Jacobson* at ¶ 4.

23 45.On October 4, 2011, an Unfair Labor Practices hearing was held by the
24 Public Employment Relations Commission (“PERC”) before Hearing
25

1 Examiner Katrina Boedecker. *Mack Dec.*, **Ex. N at p. 1**. The Hearing
2 Examiner found that no mutual agreement had been reached between
the Guild and the City regarding Mr. Thoma's employment. *Id.*

3 46. In February of 2012, Mr. Thoma, the City of Spokane, and the Human
4 Rights Commission moved forward with a planned settlement
5 agreement. *See Complaint, App. C*. That agreement stated that it was
6 "between the Washington State Human Rights Commission and Brad
7 Thoma, Complainant and City of Spokane, Respondent." *Id.* The
8 agreement also stated explicitly that "[t]his agreement is contingent on
approval by the Spokane City Council and will become effective upon
9 approval by the Washington State Human Rights Commission." *Id.* The
agreement was signed by Mr. Thoma, but was not signed by the HRC.
Id.

10 47. At the time he signed the HRC agreement, Mr. Thoma understood that it
11 would not become effective until the Human Rights Commission
12 approved it. *Mack Dec.*, **Ex. E at 71:8-11**.

13 48. In the meantime, Plaintiff prematurely filed the instant action on
14 February 28, 2012. *Complaint*.

15 49. On February 22, 2012, Laura Lindstrand sent an internal HRC memo
16 recommending that the Agency decline to approve the settlement to
17 HRC Director Sharon Ortiz. *Mack Dec.*, **Ex. T**. Ms. Ortiz agreed that
the settlement should not be approved, and so informed the parties,
18 including Mr. Thoma's counsel, the same date. *Mack Dec.*, **Ex. U**.

19 50. On February 27, 2012, the City Council voted unanimously to reject the
20 proposed HRC settlement. *Mack Dec.*, **Ex. V at p. 5**.

21 DATED this 25th day of November, 2013.

22 PATTERSON BUCHANAN
23 FOBES & LEITCH, INC., P.S.

24 By: /s/ Sarah S. Mack

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CERTIFICATE OF SERVICE

I hereby certify that on the date provided below I served the **Defendants’ Statement of Material Facts** via the Court’s electronic CM/ECF filing system, which will provide notice to the following individual(s):

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I certify under penalty of perjury that the foregoing is true and correct.

Executed at Seattle, Washington, on November 25, 2013.

/s/ Karen L. Yun
Karen L. Yun
Paralegal/Legal Assistant to Sarah S. Mack