

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**
) **SUPPLEMENTAL STATEMENT**
) **OF MATERIAL FACTS**

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

23 37. Thoma, as a police Sergeant for the Defendant City, was a
24 “classified” employee pursuant to RCW 41.12, et seq.; Spokane, City Charter,

25 PLAINTIFF’S LR 56.1
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MATERIAL FACTS - 1

1 Article VI: Civil Service, Section 55, Suspension, Reduction in Rank and
2 Discharge – Appeals; and the Merit System Rules of the Civil Service
3 Commission City of Spokane, as adopted 12/17/2002 and last amended 6/20/
4 2004, p. 34-35. See Declaration of Susan C. Nelson (“Nelson Decl.”), **Ex. L** and
5 **M.**

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7 38. The Human Rights Commission states “*alcoholics are considered to*
8 *have a disability.*” See Nelson Decl., **Ex. K.**

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10 39. The Defendant City’s Administrative Policy and Procedure ADMIN
11 0620-06-16 (“Discrimination in the Workplace Policy”) prohibits discrimination
12 against those suffering a disability. See Nelson Decl., **Ex. T.** (“*Discrimination in*
13 *employment occurs when an employer ... makes any employment related decision*
14 *solely or in part on the basis of that person’s ... disability.*”)

15
16 40. Sgt. Thoma was found to be candid when he admitted pre-
17 termination to his health care providers that his symptoms of alcoholism included:
18 blackouts, compulsion to use, binge use, gulping drinks, and concern by family
19 and friends. See Nelson Decl., **Ex. B**, at Colonial 00001-2.

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21 41. Sgt. Thoma at times awakened after drinking and found he could not
22 remember a part of the previous evening; that a near relative or close friend had
23 worried or complained about his drinking; that he had gotten into physical fights
24

1 due to drinking; and that his drinking caused problems between him and a near
2 relative or close friend. See Nelson Decl., **Ex. B**, at Colonial 00025.

3 42. Alcoholism affected Sgt. Thoma's parenting thus his relationship
4 with his daughter and caused him to engage in activities considered child
5 endangerment – specifically driving his minor daughter while intoxicated. See
6 Nelson Decl., **Ex. B**, at Colonial 00038.

8 43. Sgt. Thoma was assessed as having additional indicators of
9 alcoholism: loss of control, preoccupation with use, blackouts, compulsion to use,
10 unusual behavior, neglected responsibilities, difficulty performing job due to hang
11 overs, etc. See Nelson Decl., **Ex. B**, at Colonial 00046.

13 44. Sgt. Thoma's treatment records reflect he experienced reduced
14 productivity at work as a result of his alcohol use. See Nelson Decl., **Ex. B**, at
15 Colonial 00044.

17 45. Drinking negatively affected Sgt. Thoma's relationship with his ex-
18 wife and contributed to his divorce as he did not spend "*time with her like I*
19 *should, not coming home some nights until late, short temper, emotionally*
20 *detached, avoiding functions where there wasn't going to be drinking.*" See
21 Nelson Decl., **Ex. C**, at p.45-46, ll.19-21.

1 46. Defendants expert, Steven Juergens, M.D., opines that “*Mr. Thoma*
2 *has been alcohol dependent for most likely a few years before his arrest and had*
3 *not sought treatment and continued to drink alcohol in a manner that caused*
4 *difficulties in major life areas... it appears it did affect his personal life as noted*
5 *in his intake from the Colonial Clinic.*” See Nelson Decl., **Ex. A**, at p. 5, ¶ 3.

7 47. Dr. Juergens asserts that based upon his experience and education,
8 “*Alcohol dependence is a chronic condition and there is a significant risk of*
9 *relapse, even in people who are in treatment.*” Id., at p. 4, ¶ 4.

11 48. Defendant City admits that alcoholism is a disability and as a result
12 it had a legal obligation to find a reasonable accommodation for Thoma. “*the*
13 *City does not get to choose whether or not to consider alcoholism as a disability.*
14 *It IS a legal disability recognized under the Americans with Disabilities Act and*
15 *corresponding Washington State law, and we have a legal obligation to find*
16 *reasonable accommodation.*” See Nelson Decl., **Ex. D**.

18 49. Defendant City’s Mayor admitted statutorily authorized ignition
19 interlock waivers have “*served as reasonable accommodations that kept other*
20 *officers employed.*” “*...[A]ccording to the Washington State Human Rights*
21 *Commission, at least 10 other law enforcement agencies in the state had signed*
22 *wavers allowing officers to drive government-owned vehicles without the*
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1 *interlock devices required by their deferred prosecution arrangements. The*
2 *waivers served as reasonable accommodations that kept other officers*
3 *employed.” See Nelson Decl., Ex. E.*

4 50. During Defendant Kirkpatrick’s tenure another SPD Detective with a
5
6 DUI was allowed to operate city vehicles because “[h]e did not claim to be
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8 *alcoholic.” See Nelson Decl., Ex. F, at p.107, ll.2-14.*

9 51. During Kirkpatrick’s tenure another female officer arrested for DUI
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11 was allowed to drive Defendant City vehicles, was not demoted or terminated,
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13 and was permitted to take her disciplinary suspension in blocks of time that would
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15 not interfere with her ability to maintain benefits. *Id.*, at p. 108-110, ll.20-16.

16 52. Defendant Kirkpatrick testified the risk of Sgt. Thoma relapsing or
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18 increasing potential liability for the Defendant City should he be involved in an
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20 accident while driving a City owned vehicle rendered the statutorily authorized
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22 waiver an unreasonable accommodation. *Id.* at p.105, ll.11-23; p.106, ll.17-21.

23 53. At no time did Defendants ever discuss with Sgt. Thoma what
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25 effects alcoholism had on his work much less any need for accommodations to
26
27 perform his work. *See Declaration of Bradley N. Thoma (“Thoma Decl.”).*

28 54. At no time did Defendants offer Sgt. Thoma any of the positions
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30 available in the SPD that would have allowed him to work, regardless of whether

1 the SPD refused to install an ignition interlock device on Sgt. Thoma's City car or
2 to execute the Declaration permitting the statutorily authorized waiver. See
3 Thoma Decl.

4 55. At no time did Sgt. Thoma ask Defendants to eliminate essential
5 functions of his job or transfer those functions to another employee. See Thoma
6 Decl.

7 56. Defendants ordered a disciplinary hearing (Loudermill hearing) at
8 which time Sgt. Thoma was advised he would be terminated because both an
9 ignition interlock device and/or the statutorily authorized waiver were deemed
10 unacceptable. See Thoma Decl.

11 57. Defendant Kirkpatrick testified that prior to the disciplinary hearing
12 she intended to demote Sgt. Thoma. "*Q. But your intention going into the*
13 *Loudermill, ma'am, was to at least, at a minimum, demote him? A. That's the*
14 *intention.*" See Nelson Decl., **Ex. F**, at p.150, ll.10-12.

15 58. Scott Stephens, a Major for the SPD at the time of Sgt. Thoma's
16 discipline, attended command staff meetings wherein Sgt. Thoma was discussed
17 revealing there were no facts Sgt. Thoma could have presented to Defendant
18 Kirkpatrick during the scheduled Loudermill that would have changed her
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1 decision to demote or terminate Sgt. Thoma. See Declaration of Scott Stephens
2 (“Stephens Decl.”).

3 59. At no time did Defendants offer any assistance to address Sgt.
4 Thoma’s disability. See Thoma Decl.

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6 60. Sgt. Thoma was never offered the possibility of performing
7 administrative functions similar to what was provided to other restricted SPD
8 employees such as the officer who lost his badge and arrest authority when placed
9 under Federal indictment in June 2009. See Thoma Decl.; See also Stephens
10 Decl.
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12 61. Defendants terminated Sgt. Thoma advising him that because his
13 driver’s license was encumbered, he was allegedly prevented from performing
14 essential functions of the job. See Thoma Decl.
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16 62. Neither of the job descriptions for a SPD sergeant or SPD Detective
17 state driving is an essential function of the job. Instead applicants are only
18 required to possess a valid driver’s license. See Nelson Decl., **Ex. I**.
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20 63. Sgt. Thoma at all times possessed a valid driver’s license. See
21 Thoma Decl.
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1 64. Defendants' offered to place Sgt. Thoma in non-commissioned
2 layoff status for two years and "*support him in trying to find a different job.*" See
3 Nelson Decl., **Ex. F**, at p.141, ll.8-15 and **Ex. H** at COS001566.

4 65. Chief Kirkpatrick on the offer to assist Thoma stating: "*Just as a*
5 *heads up he would like to be a firefighter and drive fire trucks and was wondering*
6 *if Chief Williams would be more 'swell' (my adjective not Thoma's) than me. No*
7 *Kidding!*" "*Thanks. Shall I tell the good chief, or will you that he is to expect*
8 *a new employee? :)*" ... "*I don't want to miss anyone's expression (I am so small*
9 *minded and easily entertained) so you can tell him, but I want to be in the room to*
10 *see the reaction.*" See Nelson Decl., **Ex. G**.

11 66. Defendants' offer to return Thoma to a commissioned officer
12 position was not guaranteed but only a possibility. "*Plaintiff would be eligible to*
13 *return as a fully-commissioned officer to the Department.*"

14 67. Sgt. Thoma had first-hand knowledge that there were positions he
15 was qualified for that did not require him to spend time driving. See Thoma Decl.

16 68. The SPD always had a need for qualified officers to perform
17 administrative work. See Thoma Decl.; See also Stephens Decl.

18 69. There are SPD Sergeants and Detectives who spend virtually no time
19 on the job driving. See Stephens Decl.

1 70. Administrative Sergeants “do all of [SPD’s] limited commissions,
2 they supervise the front desk, ... they’re liaisons to the court, they’re a quasi
3 liaison to District 81, they’re our liaison to mental health...” See Nelson Decl.,
4 Ex. J at p.87, ll. Additionally, range sergeant’s “coordinate all firearms training
5 for the Department...” and are not patrol. Id. at p.91-92, ll. 23-3.
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7 71. The SPD property room is considered an office job assignment not
8 requiring driving; detectives are primarily an office job; and the Public Safety
9 Building has officers assigned to man the desk as an administrative job. Id., p.92,
10 ll.17-20; p.93, ll. 16-22; p.94, ll.9-18.
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12 72. In the past SPD officers with medical conditions that impacted their
13 ability to drive or perform essential functions of the job were allowed to work in
14 administrative positions until retirement. See Stephens Decl.
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16 73. During Sgt. Thoma’s SPD career, he was aware of numerous officers
17 placed on light duty assignments. See Thoma Decl.
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19 74. Light duty assignments were periodically granted to SPD officers for
20 long periods of time, despite the policy stating they were limited to six calendar
21 months. See Thoma Decl.
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1 75. Light duty assignments were made to allow officers to work through
2 whatever hardship was occurring in their lives while maintaining their jobs. See
3 Thoma Decl.

4 76. The SPD policy governing light duty specifically precludes
5 employees assigned to light duty from driving city owned vehicles. See Thoma
6 Decl., **Exhibit B**.

7 77. During Sgt. Thoma's twenty year career at the SPD he worked as
8 both a Detective and Sergeant in the Special Investigations Unit (SIU) division.
9 See Thoma Decl.

10 78. As a Detective and as a SIU Sgt., when driving was required, at least
11 75% to 80% of Thoma's time involved two officers in one vehicle. See Thoma
12 Decl.

13 79. Sgt. Thoma does not ever recall any officer being told they could not
14 ride double while effectuating their duties. See Thoma Decl.

15 80. In SIU commanded that officers were commanded to work in teams
16 while in the field. See Thoma Decl.

17 81. In December 2011, Sgt. Thoma received notice that the SPD wanted
18 to settle all of the legal claims he had against it and the City. See Thoma Decl.

1 82. A settlement agreement was reached with the Defendants that
2 required Sgt. Thoma to dismiss his human rights complaint, guild grievance, and
3 lawsuit in consideration for reinstatement to the force as a Detective and payment
4 of back wages at a Sergeant's pay rate. See Thoma Decl.

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6 83. The settlement agreement was confirmed via correspondence
7 between Defendant City Assistant City Attorney Jacobson, SPD Guild Attorney
8 Hillary McClure, and Sgt. Thoma's attorneys. See Nelson Decl., **Ex. N.**

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10 84. When Sgt. Thoma accepted the offer there was no requirement or
11 qualifying condition that the Human Rights Commission (HRC) would execute
12 the agreement or that the City Council was required to approve it. See Thoma
13 Decl.

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15 85. In December 2011, Sgt. Thoma understood and believed all the
16 material terms of the settlement agreement had been agreed to and only
17 formalities such as who he would report to, were left to be resolved before he
18 would begin work in January 2012. See Thoma Decl.

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20 86. In Mid-January 2012, Sgt. Thoma was advised the written settlement
21 documents had yet to be finalized. See Thoma Decl. According to the Defendant
22 City's Assistant City Attorney that was better for Thoma as he would "*get one*
23 *more month of back pay at the Sergeant level, before being demoted to the*
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1 *Detective level*” when he returned March 1, 2012. See Thoma Decl.; See Nelson
2 Decl., **Ex. O.**

3 87. Sgt. Thoma was later advised that the HRC would need to execute
4 the agreement, but just as a formality to ensure it dropped its investigation upon
5 dismissal of his legal claim. See Nelson Decl. **Ex. O.**

7 88. In January 2012, internal SPD correspondence discusses the terms of
8 Thoma’s reinstatement, his seniority, and rank. See Nelson Decl., **Ex. R.**

9 89. In a January 25, 2012, correspondence Assistant City Attorney
10 Jacobson confirmed that Defendants’ viewed the City Council confirmation as
11 imminent as the City Council had “*been briefed and [she] did not anticipate any*
12 *issues.*” See Nelson Decl., **Ex. P.**

14 90. In February 2012, the Defendant City’s administration sent
15 correspondence putting the City Council on notice that “*the City does not get to*
16 *choose whether or not to consider alcoholism as a disability. It IS a legal*
17 *disability recognized under the Americans with Disabilities Act and*
18 *corresponding Washington State law, and we have a legal obligation to find*
19 *reasonable accommodation.*” See Nelson Decl., **Ex. D.**

22 91. In February 2012, a press release was authorized on behalf of
23 Defendant City Mayor stating “...[A]ccording to the Washington State Human
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1 *Rights Commission, at least 10 other law enforcement agencies in the state had*
2 *signed waivers allowing officers to drive government-owned vehicles without the*
3 *interlock devices required by their deferred prosecution arrangements. **The***
4 *wavers served as reasonable accommodations that kept other officers*
5 *employed.” See Nelson Decl., Ex. E.*

7 92. In February 2012, after the City of Spokane Mayor and Assistant
8 City Attorney executed the final agreement reinstating Sgt. Thoma to the SPD,
9 Sgt. Thoma also executed the agreement. See Thoma Decl.

11 93. Prior to reaching the settlement agreement with the City of Spokane,
12 Sgt. Thoma had obtained replacement employment in Alaska. See Thoma Decl.

13 94. Based on Sgt. Thoma’s understanding that a finalized settlement
14 agreement had been reached and that he would be reinstated by the SPD, he
15 resigned his Alaska employment in order to remain in Spokane to resume his
16 position with the SPD. See Thoma Decl.

18 95. In reliance upon the finalized settlement agreement and the
19 Defendant City’s assurances and promises of reinstatement, Sgt. Thoma borrowed
20 \$8,000 from a friend in order to make his January, February, and March 2012
21 mortgage payments. See Thoma Decl. Sgt. Thoma was also forced to utilize his
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1 credit cards and incurred debt in excess of \$15,000 while waiting to be reinstated
2 to the SPD. See Thoma Decl.

3 96. On or about February 23, 2012 the Spokane City Council was
4 advised by the City Public Affairs Officer that “*Our own assessment of the case*
5 *was that there was no legal or factual basis to uphold a claim of discrimination,*
6 *in part, because Mr. Thoma didn’t disclose his disability until after discipline*
7 *proceedings had begun.*” See Nelson Decl., **Ex. S.**

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9 97. Ultimately, in March 2012 Sgt. Thoma learned that the Defendant
10 City by and through its City Council had refused to approve his returning to work.
11 See Thoma Decl.

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13 98. When the Defendant City refused to enforce settlement agreement
14 which the Mayor, the Assistant City Attorney, and Sgt. Thoma had executed, Sgt.
15 Thoma was left unemployed and without an income. See Thoma Decl.

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17 99. Sgt. Thoma was unable to return to employment in Alaska until
18 August 2012. See Thoma Decl. As a result, he eventually was unable to make
19 his mortgage payments and ultimately lost his home. See Thoma Decl.
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1 DATED this 16th day of December, 2013.

2 DUNN BLACK & ROBERTS, P.S.

3 s/ SUSAN C. NELSON

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MATERIAL FACTS - 15

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 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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PLAINTIFF'S LR 56.1
SUPPLEMENTAL STATEMENT OF
MATERIAL FACTS - 16

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